
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

for the period ended December 31, 1999

OR

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

For the transition period from _____ to _____

Commission file number 333-15627

8X8, INC.

(Exact name of Registrant as specified in its Charter)

2445 Mission College Blvd.

Santa Clara, CA 95054

(Address of Principal Executive Offices including Zip Code)

(408) 727-1885

(Registrant's Telephone Number, Including Area Code)

(Former name, former address and former fiscal year if changed
since last report)

was required to file reports), and (2) has been subject to such filing requirements for the past 90 days. YES [X] NO []

The number of shares of the Registrant's Common Stock outstanding as of February 11, 2000 was 18,924,880.

8X8, INC.

FORM 10-Q

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PART I -- FINANCIAL INFORMATION

Item 1. Financial Statements

8X8, INC.

CONDENSED CONSOLIDATED BALANCE SHEET

(In thousands, unaudited)

	December 31, 1999	March 31, 1999
	-----	-----
ASSETS		
Current assets:		
Cash, cash equivalents and short-term investments	\$21,781	\$15,810
Accounts receivable, net	1,395	5,886
Inventory	1,536	3,915
Prepaid expenses and other assets	1,084	878
	-----	-----
Total current assets	25,796	26,489
Property and equipment, net	2,260	2,163
Intangibles and other assets	3,307	57
Deferred debt issuance costs	2,346	--
	-----	-----
	\$33,709	\$28,709
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$1,750	\$1,917
Accrued compensation	1,875	1,236
Accrued warranty	643	1,043
Deferred revenue	1,331	4,089
Other accrued liabilities	1,300	1,601
	-----	-----
Total current liabilities	6,899	9,886
	-----	-----
Convertible subordinated debentures	7,500	--
	-----	-----
Total liabilities	14,399	9,886
	-----	-----
Stockholders' equity:		
Common stock	19	15
Additional paid-in capital	63,835	48,363
Notes receivable from stockholders	(235)	(266)
Deferred compensation	--	(197)
Accumulated other comprehensive loss	--	(193)
Accumulated deficit	(44,309)	(28,899)
	-----	-----
Total stockholders' equity	19,310	18,823
	-----	-----
	\$33,709	\$28,709
	=====	=====

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

8X8, INC.

Condensed Consolidated Statements of Operations

(in thousands, except per share amounts)

(unaudited)

	Three Months Ended December 31,		Nine Months Ended December 31,	
	1999	1998	1999	1998
	-----	-----	-----	-----
Product revenues	\$4,941	\$7,611	\$15,715	\$22,497
License and other revenues	1,297	2,468	3,127	3,685
	-----	-----	-----	-----
Total revenues	6,238	10,079	18,842	26,182
	-----	-----	-----	-----
Cost of product revenues	1,937	5,621	6,678	15,874
Cost of license and other revenues	56	9	114	59
	-----	-----	-----	-----
Gross profit	4,245	4,449	12,050	10,249
	-----	-----	-----	-----
Operating expenses:				
Research and development	2,854	2,512	8,137	7,877
Selling, general and administrative	3,545	5,409	10,918	14,061
In-process research and development	--	--	10,100	--
Amortization of intangibles	189	--	424	--
	-----	-----	-----	-----

Total operating expenses	6,588	7,921	29,579	21,938
Loss from operations	(2,343)	(3,472)	(17,529)	(11,689)
Other income, net	109	249	2,185	845
Loss before provision for income taxes	(2,234)	(3,223)	(15,344)	(10,844)
Provision for income taxes	--	--	66	--
Net loss	(\$2,234)	(\$3,223)	(\$15,410)	(\$10,844)
Net loss per share:				
Basic and diluted	(\$0.12)	(\$0.21)	(\$0.88)	(\$0.73)
Shares used in per share calculations:				
Basic and diluted	18,035	15,105	17,421	14,945

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

8x8, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands, unaudited)

	Nine Months Ended December 31,	
	1999	1998
Cash flows from operating activities:		
Net loss	(\$15,410)	(\$10,844)
Adjustment to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,310	684
Amortization of deferred compensation	87	329
Purchased in-process research and development	10,100	--
Gain on sale of investments, net	(1,687)	--
Other	--	(192)
Net effect of changes in current and other assets and current liabilities	3,265	940
Net cash used in operating activities	(2,335)	(9,083)
Cash flows from investing activities:		
Purchases of property and equipment	(950)	(1,473)
Proceeds from sale of nonmarketable equity investment	1,880	--
Cash paid for acquisitions, net	(133)	--
Purchases of common stock from minority interest in subsidiary	--	(85)
Short-term investments-trading activity, net	--	60
Net cash provided by (used in) investing activities	797	(1,498)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	577	489
Proceeds from issuance of convertible subordinated debentures	7,500	--
Debt issuance costs	(556)	--
Loans to stockholders	(76)	--
Repurchase of common stock	(10)	--
Repayment of notes receivable from stockholders	74	479
Net cash provided by financing activities	7,509	968
Net increase (decrease) in cash and cash equivalents	5,971	(9,613)
Cash and cash equivalents at the beginning of the period	15,810	26,677
Cash and cash equivalents at the end of the period	\$21,781	\$17,064

See accompanying notes to condensed consolidated financial statements.

8x8, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF THE BUSINESS

8x8, Inc. ("We" or "8x8") was incorporated in California in February 1987. In December 1996, 8x8 was reincorporated in Delaware.

We develop, manufacture and market telecommunication equipment and software focused primarily on multimedia Internet protocol (IP) applications. Our products are highly integrated, leverage our proprietary

technology and are comprised of multimedia communication semiconductors, multimedia compression algorithms, network protocols and embedded system design. Our products are used in applications including voice-over-IP, videoconferencing and video monitoring. We currently market our products mainly to original equipment manufacturers (OEMs), and also to distributors, dealers and end users for our video monitoring system products.

In an effort to expand the available market for our multimedia communication products, we began developing low-cost consumer videophones and marketing these products to consumers under the ViaTV brand name in 1997. However in the fourth quarter of fiscal 1999, we determined that a combination of factors including the high cost of maintaining a consumer distribution channel, the slower than expected growth rate of the consumer videophone market, and the low gross margins typical of a consumer electronics product made it unlikely that the consumer videophone business would be profitable in the foreseeable future. Therefore, we announced in April 1999 that we would cease production of the ViaTV product line and withdraw from our distribution channels over the subsequent several quarters. We do not expect to be able to generate revenues from our other products to compensate for the loss of ViaTV revenues for at least the next twelve months, if at all. If we cannot adequately compensate for lower revenues with decreased manufacturing overhead expenses and with lower operating expenses, it could have a material adverse effect on our business and operating results.

2. BASIS OF PRESENTATION

Our fiscal year ends on the last Thursday on or before March 31. Fiscal 2000 will be a 53 week year, while fiscal 1999 was a 52 week year. Our fiscal quarters end on the last Thursday on or before the end of each calendar quarter. The three and nine month periods ended December 30, 1999 included 13 weeks and 40 weeks of operations, respectively. The three and nine month periods ended December 31, 1998 included 14 weeks and 40 weeks of operations, respectively. For purposes of these condensed consolidated financial statements, we have indicated our fiscal year as ending on March 31 and our interim periods as ending on December 31.

The accompanying interim condensed consolidated financial statements are unaudited and have been prepared on substantially the same basis as our annual financial statements for the year ended March 31, 1999. In our opinion, these financial statements reflect all adjustments (consisting only of normal recurring accruals) considered necessary for a fair presentation of our financial position, results of operations and cash flows for the periods presented. These financial statements should be read in conjunction with our audited financial statements for the year ended March 31, 1999, including notes thereto, included in our fiscal 1999 Annual Report on Form 10-K.

The results of operations for the interim periods included in these financial statements are not necessarily indicative of the results to be expected for any future period or the entire fiscal year.

3. BALANCE SHEET DETAIL

(in thousands)

	December 31, 1999	March 31, 1999
	-----	-----
Inventory:		
Raw materials.....	\$123	\$952
Work-in-process.....	605	892
Finished goods.....	808	2,071
	-----	-----
	\$1,536	\$3,915
	=====	=====

4. CONVERTIBLE SUBORDINATED DEBENTURES

In December 1999, we issued \$7.5 million of 4% Series A and Series B convertible subordinated debentures (the "Debentures"). The Debentures mature on December 17, 2002, unless converted or redeemed earlier.

The \$3.75 million Series A debentures are convertible into 8x8's common stock at a conversion price equal to 117.5% of the average closing bid price of 8x8's common stock for the five trading days starting February 1, 2000. The conversion price per share cannot be higher than \$7.05 or lower than \$4.00. The \$3.75 million Series B debentures are convertible into 8x8's common stock at a conversion price equal to 117.5% of the average closing bid price of 8x8's common stock for the five trading days starting March 8, 2000. We have the option to redeem the Series B debentures at par in the event that the Series B conversion price is lower than the Series A conversion price divided by 1.175. In addition, we have the option to redeem the Series B debentures at 107% of par in the event that the Series B conversion price is greater than two times the Series A conversion price.

For each of the Debentures, the lender received a three year warrant to purchase common shares of 8x8 equal in number to the amount of the corresponding debentures divided by the conversion price of the debentures. The exercise price of the warrants will be equal to the conversion price of the corresponding debentures. We also issued warrants to the placement agent equal to 10% of the total warrants issued to the lender at substantially the same terms granted to the lender. If the Series B debentures are redeemed by 8x8, the related warrants will be terminated.

Using the Black-Scholes pricing model, we estimated that the fair value of the warrants issued in connection with the Series A debentures approximated \$1.8 million at December 31, 1999. We will reflect the amortization of the fair value of the warrants as a non-cash charge to interest expense over the term of the warrants. We recognized \$32,000 of interest expense associated with these warrants during the quarter ended December 31, 1999. We have not estimated the fair value of the warrants accompanying the Series B debentures as of December 31, 1999 because of our potential ability to redeem said debentures under the conditions discussed above.

Under the Securities Act of 1933, as amended, we have agreed to register for resale of the common stock issuable upon conversion of the debentures and exercise of the warrants. We are obligated to file a registration statement covering such shares within 95 days after the closing and will use our best efforts to have the registration statement declared effective within 150 days after closing.

On January 23, 2000, 8x8, the lender and the placement agent agreed to fix the conversion price of the Series A debentures and the related warrants at \$7.05 per share.

5. COMPREHENSIVE INCOME (LOSS)

Comprehensive income (loss), as defined, includes all changes in equity (net assets) during a period from non-owner sources. For us, the primary difference between net income (loss) and comprehensive income (loss) is gains and losses on short-term investments classified as available-for-sale. Comprehensive income (loss) for the current reporting and comparable periods in the prior year is as follows (in thousands):

	Three Months Ended December 31,		Nine Months Ended December 31,	
	1999	1998	1999	1998
Net loss, as reported.....	(\$2,234)	(\$3,223)	(\$15,410)	(\$10,844)
Unrealized gains (losses) on investments.....	--	(124)	193	(186)
Comprehensive loss.....	(\$2,234)	(\$3,347)	(\$15,217)	(\$11,030)

6. 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 common shares outstanding during the period (denominator). Diluted net income (loss) per share is computed using the weighted average number of common shares and potential common shares outstanding during the period. Potential common shares result from the assumed exercise, using the treasury stock method, of common stock options and warrants, unvested restricted common stock, and common stock issuable upon the conversion of convertible subordinated debentures having a dilutive effect. The numerators for each period presented are equal to the reported net loss. Additionally, due to net losses incurred for all periods presented, weighted average basic and diluted shares outstanding for the respective three and nine month periods are the same. The following equity instruments were not included in the computations of net income (loss) per share because the effect on the calculations would be anti-dilutive (in thousands):

	Three and Nine Month Periods Ended December 31,	
	1999	1998
Common stock options.....	4,163	3,346
Unvested restricted common stock.....	501	187
Common stock issuable upon the conversion of subordinated debentures.....	1,300	--
Common stock warrants.....	1,430	--
Total	7,394	3,533

Common stock issuable upon conversion of the Series A and Series B subordinated debentures and related warrants was estimated using a conversion price calculated based upon the average closing bid price of our common stock for the five trading days ended December 31, 1999.

7. SEGMENT REPORTING

Due to a change in 8x8's organizational structure and enhancements in our systems for internal reporting during our second quarter ended September 30, 1999, we determined that we have two reportable segments, Broadband Communications and Video Monitoring, as defined by Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information." Due to limitations in our internal reporting systems, it is not practicable to disclose results for the segments for either the nine month period ended December 31, 1999 or the three and nine month periods ended December 31, 1998. There are no intersegment revenues between the two reportable segments. Shared support service functions such as human resources, facilities management and other infrastructure support and overhead aren't allocated, but rather are included in the Corporate and Other category. In addition, all activities associated with our ViaTV product line, which has been discontinued as discussed in Note 1, have been included in the Corporate and Other category. Special charges determined to be significant are reported separately in the Condensed Consolidated Statements of Operations and are not assigned or allocated to the segments. All other accounting policies are applied consistently to the segments, where applicable.

(In thousands)

	Three Months Ended December 31, 1999		Six Months Ended December 31, 1999	
	Revenues	Operating Loss	Revenues	Operating Loss
Broadband Communications.....	\$4,279	(\$191)	\$8,549	\$110
Video Monitoring.....	1,574	(63)	2,966	(518)
Corporate and Other.....	385	(2,089)	1,433	(3,502)
Total	\$6,238	(\$2,343)	\$12,948	(\$3,910)

The only asset allocated by segment is inventory. Inventory allocated to the Broadband Communications and Video Monitoring segments at December 31, 1999 was approximately \$867,000 and \$669,000, respectively.

8. ACQUISITION OF ODISEI

During the first quarter of fiscal 2000, we acquired Odisei S.A., a privately held, development stage company based in Sophia Antipolis, France, that develops software for managing voice-over-IP networks. The condensed consolidated financial statements reflect the acquisition of Odisei on May 24, 1999 for approximately 2,868,000 shares of our common stock. In addition, 8x8 issued approximately 154,000 8x8 options in exchange for certain Odisei options outstanding. Certain of the shares issued to Odisei employees are subject to repurchase at a price per share of approximately \$1.30 if the employee departs prior to vesting. The purchase price of the acquisition of approximately \$13.5 million, which included approximately \$244,000 of acquisition related costs and \$648,000 for the exchange of Odisei options for our options, was used to acquire the net assets of Odisei. The purchase price

was allocated to tangible assets acquired and liabilities assumed based on the book value of Odisei's current assets and liabilities, which we believe approximates their fair value. In addition, we engaged an independent appraiser to value the intangible assets, including amounts allocated to Odisei's in-process research and development. The in-process research and development relates to Odisei's initial product for which technological feasibility had not been established and was estimated to be approximately 60% complete. The fair value of the in-process technology was based on a discounted cash flow model, similar to the traditional "Income Approach," which discounts expected future cash flows to present value, net of tax. In developing cash flow projections, revenues were forecasted based on relevant factors, including aggregate revenue growth rates for the business as a whole, characteristics of the potential market for the technology and the anticipated life of the technology. Projected annual revenues for the in-process research and development projects were assumed to ramp up initially and decline significantly at the end of the in-process technology's economic life. Operating expenses and resulting profit margins were forecasted based on the characteristics and cash flow generating potential of the acquired in-process technology. Associated risks include the inherent difficulties and uncertainties in completing the project and thereby achieving technological feasibility, and risks related to the impact of potential changes in market conditions and technology. The resulting estimated net cash flows were discounted at a rate of 27%. This discount rate was based on the estimated cost of capital plus an additional discount for the increased risk associated with in-process technology. Based on the independent appraisal, the value of the acquired Odisei in-process research and development, which was expensed in the first quarter of fiscal 2000, is \$10.1 million. The excess of the purchase price over the net tangible and intangible assets acquired and liabilities assumed was allocated to goodwill. Amounts allocated to goodwill and workforce are being amortized on a straight-line basis over five and three years, respectively. The allocation of the purchase price is as follows (in thousands):

In-process research and development.....	\$10,100
Workforce.....	200
Odisei net tangible liabilities.....	(246)
Goodwill.....	3,452

	\$13,506
	=====

The consolidated results of 8x8 include the results of the operations of Odisei from the date of the acquisition. Had the acquisition of Odisei taken place as of the beginning of the fiscal year, the pro forma net loss of 8x8 would have been substantially the same as that reported for the period.

9. NONSTATUTORY STOCK OPTION PLAN

In December 1999, our Board of Directors approved the 1999 Nonstatutory Stock Option Plan (the "Plan") with 200,000 shares initially reserved for issuance thereunder. Under terms of the Plan, options may not be issued to either Officers or Directors of 8x8; provided, however, that options may be granted to an Officer in connection with the Officer's initial employment by 8x8. The Plan has not received stockholder approval.

10. SUBSEQUENT EVENT

On January 24, 2000, we entered into a Common Stock Purchase Agreement with STMicroelectronics NV ("STM") for the private sale of 3.7 million shares of our common stock to STM at a purchase price of \$7.50 per share. The closing is subject to certain conditions including the expiration or early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended.

Upon closing of the transaction we will appoint a designee of STM to our Board of Directors. In addition, we will execute an agreement pursuant to which we will grant a non-exclusive license to certain of our technology to a subsidiary of STM, and an agreement which outlines certain joint development activities that we will conduct with said subsidiary.

11. RECENT ACCOUNTING PRONOUNCEMENTS

In March 1998, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position No. 98-1 ("SOP 98-1"), "Software for Internal Use," which provides guidance on accounting for the cost of computer software developed or obtained for internal use. We adopted SOP 98-1 in fiscal 2000. The adoption of SOP 98-1 did not have a material impact on our consolidated financial statements.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133 ("FAS 133"), "Accounting for Derivative Instruments and Hedging Activities." We are required to adopt FAS 133 in fiscal 2001. FAS 133 establishes methods of accounting for derivative financial instruments and hedging activities related to those instruments as well as other hedging activities. We do not expect that the adoption of FAS 133 will have a material impact on our consolidated financial statements.

In December 1998, the AICPA issued Statement of Position 98-9 ("SOP 98-9"), "Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions", which amends SOP 97-2, "Software Revenue Recognition" and supercedes SOP 98-4. We adopted SOP 98-9 in fiscal 2000. The adoption of SOP 98-9 did not have a material impact on our consolidated results of operations.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Report on Form 10-Q contains forward-looking statements, including but not limited to those specifically identified as such, that involve risks and uncertainties. The statements contained in this Report on Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including without limitation statements regarding our expectations, beliefs, estimates, intentions or strategies regarding the future. All forward-looking statements included in this Report on Form 10-Q are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. You should not place undue reliance on these forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of a number of factors, including, but not limited to, those set forth below under the heading "Factors That May Affect Future Results" and elsewhere in this Report on Form 10-Q.

Overview

Since June 1995, we have been executing a business strategy designed to focus our efforts exclusively on the development, manufacture and marketing of multimedia communication semiconductors, software

and systems. To date, we have marketed our multimedia communication semiconductors and related technology to OEMs and distributors, mainly for videoconferencing and videophone applications. This product line includes the *LVP*, *VCP* and *VCPex* semiconductors.

In an effort to expand the available market for our multimedia communication products, and to capitalize on our vertically integrated technology, we began developing low-cost consumer videophones and marketing these products to consumers under the *ViaTV* brand name in 1997. The *ViaTV* videophone enables phone call participants to both hear and see each other while communicating over a standard analog telephone line. We shipped our first *ViaTV* product in February 1997, and over the next two years introduced several new videophone products, expanded our distribution channels in North America, Europe and Asia, and became a leading manufacturer of consumer videophones. However in the fourth quarter of fiscal 1999, we determined that a combination of factors including the high cost of maintaining a consumer distribution channel, the slower than expected growth rate of the consumer videophone market, and the low gross margins typical of a consumer electronics product made it unlikely that the consumer videophone business would be profitable in the foreseeable future. Therefore, we announced in April 1999 that we would cease production of the *ViaTV* product line and withdraw from our distribution channels over the subsequent several quarters. In conjunction with this decision we recorded a \$5.7 million charge associated with the write-off of *ViaTV* videophone inventories in the fourth fiscal quarter of 1999. We do not expect to be able to generate revenues from our other products to compensate for the loss of *ViaTV* revenues for at least the next twelve months, if at all. If we cannot adequately compensate for lower revenues with decreased manufacturing overhead expenses and with lower operating expenses, it could have a material adverse effect on our business and operating results.

In June 1998, we entered the market for video monitoring products with our *RSM-1500* Remote Surveillance Module. In August 1999, we announced the *RSM-1600* Master Transceiver, an upgrade version of the *RSM-1500* module, and the *RSM-700* Video/Alarm Expander. The *RSM-1500* and *RSM-1600* modules enable real-time remote video monitoring over POTS lines. The target market for video monitoring is primarily owners of small businesses such as convenience stores and restaurants who need the ability to view their premises from any remote location in the world at any time. We currently sell video monitoring products to security distributors and dealers in North America, and are attempting to expand our distribution channels into Europe and Asia.

In December 1998, we introduced the *Audacity* Internet telephony processor, which combines telephony protocols with audio compression/decompression algorithms and implements multiple, simultaneous Internet protocol (IP) phone calls on a single integrated circuit. In April 1999, we announced our *Symphony* Media Hub, an integrated system product that is based on the *Audacity* semiconductor and that connects up to four analog telephone lines to an IP network. In September 1999, we announced the *Audacity-T2* IP Telephone Processor, an IP phone on a chip, and the *IntraSwitch* iPBX Evaluation System, a full-function IP-based private branch exchange (PBX). These products reflect our continuing efforts to develop broadband telephony technology. In the three and nine month periods ended December 31, 1999, we realized revenues of approximately \$264,000 and \$404,000, respectively, associated primarily with the sale of evaluation units of broadband telephony systems and the license of related software and reference designs.

During the first quarter of fiscal 2000, we acquired Odisei S.A., a privately held, development stage company based in Sophia Antipolis, France, that develops software for managing voice-over-IP networks. The condensed consolidated financial statements reflect the acquisition of Odisei on May 24, 1999 for approximately 2,868,000 shares of our common stock. In addition, 8x8 issued approximately 154,000 8x8 options in exchange for certain Odisei options outstanding. Certain of the shares issued to Odisei employees are subject to repurchase at a price per share of approx. \$1.30 if the employee departs prior to vesting. The purchase price of the acquisition of approximately \$13.5 million, which included \$244,000 of acquisition related costs and \$648,000 for the exchange of Odisei options for our options, was used to acquire the net assets of Odisei. The purchase price was allocated to tangible assets acquired and liabilities assumed based on the book value of Odisei's current assets and liabilities, which we believe approximates their fair value. In addition, we engaged an independent appraiser to value the intangible assets, including amounts allocated to Odisei's in-process research and development. The in-process research and development relates to Odisei's initial product for which technological feasibility had not been established and was estimated to be approximately 60% complete. The fair value of the in-process technology was based on a discounted cash flow model, similar to the traditional "Income Approach," which discounts expected future cash flows to present value, net of tax. In developing cash flow projections, revenues were forecasted based on relevant factors, including aggregate revenue growth rates for the business as a whole, characteristics of the potential market for the technology and the anticipated life of the technology. Projected annual revenues for the in-process research and development projects were assumed to ramp up initially and decline significantly at the end of the in-process technology's economic life. Operating expenses and resulting profit margins were forecasted based on the characteristics and cash flow generating potential of the acquired in-process technology. Associated risks include the inherent difficulties and uncertainties in completing the project and thereby achieving technological feasibility, and risks related to the impact of potential changes in market conditions and technology. The resulting estimated net cash flows were discounted at a rate of 27%. This discount rate was based on the estimated cost of capital plus an additional discount for the increased risk associated with in-process technology. Based on the independent appraisal, the value of the acquired Odisei in-process research and development, which was expensed in the first quarter of fiscal 2000, is \$10.1 million. The excess of the purchase price over the net tangible and intangible assets acquired and liabilities assumed has been allocated to goodwill. Amounts allocated to goodwill and workforce are being amortized on a straight-line basis over five and three years, respectively. The allocation of the purchase price is as follows (in thousands):

In-process research and development.....	\$10,100
Workforce.....	200
Odisei net tangible liabilities.....	(246)
Goodwill.....	3,452

	\$13,506
	=====

Results of Operations

The following discussion should be read in conjunction with our Condensed Consolidated Statements of Operations and the notes thereto:

Revenues

(\$ in millions)

	Three Months Ended				Nine Months Ended			
	December 31,				December 31,			
	1999		1998		1999		1998	
Product revenues:								
Multimedia communication								
semiconductor.....	\$2.8	\$1.9			\$8.1	\$8.5		
video monitoring.....	1.6	1.1			4.5	2.0		
Consumer videophone.....	0.4	4.6			2.9	12.0		
Broadband telephony.....	0.1	--			0.2	--		
Total product revenues.....	\$4.9	79%	\$7.6	75%	\$15.7	84%	\$22.5	86%
License and other revenues....	1.3	21%	2.5	25%	3.1	16%	3.7	14%
Total revenues.....	\$6.2	100%	\$10.1	100%	\$18.8	100%	\$26.2	100%

Total product revenues decreased by \$2.7 million in the third quarter of fiscal 2000 as compared to the third quarter of fiscal 1999, and decreased by \$6.8 million in the first nine months of fiscal 2000 as compared to the first nine months of fiscal 1999. The decrease in product revenues in the third quarter of fiscal 2000 is due primarily to a decrease in both units sold and ASPs for our *ViaTV* products due to our exit from the consumer videophone market. This decrease was partially offset by increases in unit shipments of our multimedia communication semiconductor and video monitoring systems products. The decrease in product revenues for the nine months ended December 31, 1999 as compared to the prior year period is due primarily to a significant decrease in both units sold and ASPs for our *ViaTV* products as well as a slight decrease in both units sold and ASPs for our multimedia communication semiconductor products. These decreases were partially offset by an increase in sales of our video monitoring systems products.

License and other revenues consist of technology licenses, including royalties required under such licenses, and nonrecurring engineering fees for services that we perform for our customers. License and other revenues decreased by approximately \$1.2 million in the third quarter of fiscal 2000 as compared to the third quarter of fiscal 1999, and decreased by \$558,000 in the first nine months of fiscal 2000 as compared to the first nine months of fiscal 1999. There can be no assurance that we will receive any revenues from licensing or other such arrangements in the future. See "Factors That May Affect Future Results-No Assurance of Future License and Other Revenues" and "Factors That May Affect Future Results-Dependence on Key Customers."

No customer represented 10% or more of our total revenues for the quarter ended December 31, 1999. Revenues derived from *ViaTV* products sold-through by one distribution customer represented approximately 14% of our total revenues for the quarter ended December 31, 1998. No customer represented 10% or more of our total revenues for the nine month periods ended December 31, 1999 and 1998, respectively.

Revenues derived from customers outside of the United States as a percentage of total revenues were as follows (See "Factors That May Affect Future Results-International Operations."):

	Three Months Ended		Nine Months Ended	
	December 31,		December 31,	
	1999	1998	1999	1998
Asia Pacific.....	25%	31%	21%	27%
Europe.....	27%	18%	24%	19%
Total.....	52%	49%	45%	46%

Gross Profit

(\$ in millions)	Three Months Ended		Nine Months Ended	
	December 31,		December 31,	
	1999	1998	1999	1998
Gross profit from product revenues.....	\$3.0	\$2.0	\$9.0	\$6.6
Gross margin.....	61%	26%	57%	29%
Gross profit from license and other revenues.....	\$1.2	\$2.5	\$3.0	\$3.6
Gross margin.....	92%	100%	97%	97%

Product gross margins increased to 61% in the third quarter of fiscal 2000 as compared to 26% in the third quarter of fiscal 1999, and increased to 57% in the first nine months of fiscal 2000 from 29% for the first nine months of fiscal 1999. The increase in product gross margins during the three and nine month periods ended December 31, 1999 as compared to the prior year is due to an increase in higher margin multimedia communication semiconductor and video monitoring system revenues as a percentage of total revenues and due to significantly higher gross margins realized on sales of our *ViaTV* products.

As discussed above, we recorded a \$5.7 million reserve associated with the write-off of *ViaTV* product inventory in the fourth quarter of fiscal 1999 due to our decision to cease production of the *ViaTV* product line and withdraw from our distribution channels. Gross margins on *ViaTV* product sales during the three and nine month periods ended December 31, 1999 were impacted significantly as we released excess reserves due to much better than expected *ViaTV* unit sales and related selling prices and due to the liquidation of certain raw material inventories rendered excess or obsolete when we ceased production of the *ViaTV* product line.

Gross profit from license and other revenues decreased by approximately \$1.3 million in the third quarter of fiscal 2000 as compared to the third quarter of fiscal 1999, and decreased by approximately \$613,000 in the first nine months of fiscal 2000 as compared to the first nine months of fiscal 1999. There can be no assurance that we will receive any revenues from such license and other revenue sources in the future. See "Factors That May Affect Future Results-No Assurance of Future License and Other Revenues."

The markets for our products are characterized by falling average selling prices, which could have a material adverse effect on our future business and operating results if we cannot achieve lower cost of sales and/or higher sales volumes. We expect that, as a result of competitive pressures and other factors, gross profit as a percentage of revenue for our multimedia

communication semiconductor products will likely decrease for the foreseeable future. Gross profit as a percent of revenue is substantially lower for the sales of video monitoring systems products than for sales of our multimedia communication semiconductors. If our systems product revenues grow as a percentage of total product revenue, we expect that gross profit as a percentage of total product revenue will decrease. See "Factors That May Affect Future Results-Fluctuations in Operating Results."

Research and Development Expenses

(\$ in millions)	Three Months Ended December 31,		Nine Months Ended December 31,	
	1999	1998	1999	1998
Research and development...	\$2.9	\$2.5	\$8.1	\$7.9
As a % of total revenues...	47%	25%	43%	30%

Research and development expenses consist primarily of personnel, system prototype design and fabrication, mask, prototype wafer and equipment costs necessary for us to conduct our development efforts. Research and development costs, including software development costs, are expensed as incurred. Research and development expenses increased by \$342,000 in the third quarter of fiscal 2000 as compared to the third quarter of fiscal 1999, and increased by approximately \$260,000 in the first nine months of fiscal 2000 as compared to the first nine months of fiscal 1999. Higher research and development expenses during the three and nine months ended December 31, 1999 as compared to the comparable periods in the prior year primarily reflects increased expenses associated with our Odisei subsidiary, which we acquired in May 1999. These increases were offset primarily by lower ViaTV product design and prototype costs due to the discontinuation of ViaTV product development efforts in April 1999.

We expect to continue to allocate substantial resources to research and development. However, future research and development costs may vary both in absolute dollars and as a percentage of total revenues. See "Factors That May Affect Future Results-Rapid Technological Change; Dependence on New Product Introduction."

Selling, General and Administrative Expenses

(\$ in millions)	Three Months Ended December 31,		Nine Months Ended December 31,	
	1999	1998	1999	1998
Selling, general and administrative.....	\$3.5	\$5.4	\$10.9	\$14.1
As a % of total revenues...	56%	53%	58%	54%

Selling, general and administrative expenses consist primarily of personnel and related overhead costs for sales, marketing, finance, human resources and general management. Such costs also include advertising, sales commissions, trade show and other marketing and promotional expenses. Selling, general and administrative expenses decreased by \$1.9 million in the third quarter of fiscal 2000 as compared to the third quarter of fiscal 1999, and decreased by approximately \$3.2 million in the first nine months of fiscal 2000 as compared to the first nine months of fiscal 1999. These decreases are due primarily to lower costs associated with the marketing, advertising and promotion of the ViaTV product line and lower headcount required to support these activities as we exited from the consumer videophone business. As we introduce and promote new broadband telephony products, and attempt to expand distribution channels for such products, future selling, general and administrative costs may vary both in absolute dollars and as a percentage of total revenues. See "Factors That May Affect Future Results-Potential Fluctuations in Operating Results."

In-process Research and Development and Amortization of Intangibles

As part of the May 1999 acquisition of Odisei, we recorded intangible assets related to goodwill and workforce that are being amortized on a straight-line basis over five and three years, respectively. Amortization of goodwill and workforce charged to operations was \$189,000 and \$424,000 in the three and nine month periods ended December 31, 1999, respectively. In addition, we incurred an in-process research and development charge of \$10.1 million in the first quarter of fiscal 2000 related to the acquisition of Odisei.

Other Income, Net

In the third quarter of fiscal 2000, other income, net, was \$109,000 and consisted primarily of interest income earned on our cash equivalents, offset by approximately \$46,000 of interest expense associated with the convertible subordinated debentures and related warrants issued in December 1999. Other income, net, for the third quarter of fiscal 1999 was \$249,000 and consisted primarily of interest income earned on our cash equivalents. Other income, net, was \$2.2 million for the nine month period ended December 31, 1999 compared to \$845,000 for the comparable period in the prior year. Other income, net, for the nine months ended December 31, 1999 includes both a \$1.9 million gain realized from the sale of a nonmarketable equity investment and approximately \$193,000 of losses realized on the sale of certain of our cash equivalent investments.

Provision for Income Taxes

There was no tax provision for the three month period ended December 31, 1999 or during the three and nine month periods ended December 31, 1998 due to net losses incurred. The tax provision for the nine month period ended December 31, 1999 represented certain foreign withholding taxes.

Through the first two weeks of February 2000, we have not encountered any disruption to our business operations due to Year 2000 issues in our internal systems and so far we consider the transition to calendar year 2000 to be smooth. While still too early to determine the effects of the Year 2000 issues on transactions with our customers and suppliers, so far we have not encountered any significant disruptions to our business operations or been notified by our customers of any Year 2000 problems with respect to our products. We continue to monitor closely both our internal systems and transactions with customers and suppliers for any indication of Year 2000 related problems.

As of the end of the third quarter of fiscal 2000, total costs incurred by 8x8 regarding the testing of current products for Year 2000 readiness, and answering and responding to customer requests related to Year 2000 issues, including both incremental spending and redeployed resources, has not exceeded \$100,000. With our Year 2000 readiness programs essentially complete, we do not anticipate incurring any significant costs beyond the third quarter of fiscal 2000 related to such programs. Our expectation regarding incurring additional Year 2000 related costs is based upon currently known circumstances and various assumptions regarding future events, and does not take into account costs related to the potential failure of key suppliers to timely address or correct Year 2000 issues, potential costs related to any customer or other product liability claims or the cost of internal software and hardware replaced in the ordinary course of business. Actual costs incurred could differ materially from our current estimates.

Liquidity and Capital Resources

As of December 31, 1999, we had cash and liquid investments totaling \$21.8 million, representing an increase of approximately \$6.0 million from March 31, 1999. We currently have no line of credit arrangements.

Cash used in operations of approximately \$2.3 million in the first nine months of fiscal 2000 is primarily attributable to the net loss of \$15.4 million, decreases in deferred revenue and accrued warranty of \$2.8 million and \$400,000, respectively, and a net gain resulting from the sale of investments of \$1.7 million. Cash used in operations was partially offset by decreases in accounts receivable, net, and inventory of \$4.5 million and \$2.4 million, respectively, an increase in accrued compensation of \$304,000, and noncash items, including a charge for purchased in-process research and development of \$10.1 million and depreciation and amortization of \$1.3 million. Cash used in operations of \$9.1 million in the first nine months of fiscal 1999 reflected a net loss of approximately \$10.8 million, an increase of \$2.2 million in accounts receivable, and a \$224,000 decrease in accrued warranty, offset primarily by a decrease of \$2.0 million in inventory, increases of \$1.0 million in deferred revenue and \$345,000 in accrued compensation and \$821,000 of noncash items.

Cash provided by investing activities in the nine month period ended December 31, 1999 is primarily attributable to proceeds from the sale of a nonmarketable equity investment of \$1.9 million, offset by capital expenditures of \$950,000 and net cash paid of \$133,000 related to the acquisition of Odisei. Cash used in investing activities in the nine month period ended December 31, 1998 is primarily attributable to capital expenditures of \$1.5 million and the repurchase of common stock from minority shareholders of a subsidiary of 8x8 in conjunction with its merger with 8x8 in August 1998.

Cash provided by financing activities in the nine month period ended December 31, 1999 included \$7.5 million of proceeds from the issuance of convertible subordinated debentures and \$577,000 of net proceeds from sales of our common stock upon the exercise of employee stock options, offset by cash paid for debt issuance related costs of \$556,000. Cash provided by financing activities in the nine month period ended December 31, 1998 consisted primarily of proceeds from the repayment of stockholders' notes receivable and net proceeds from sales of our common stock upon the exercise of employee stock options.

We believe that we will be able to fund planned expenditures and satisfy our cash requirements for at least the next twelve months from existing cash balances and cash flow from operations, if any. However, we may seek to explore business opportunities, including acquiring or investing in complementary businesses or products, that will require additional capital from equity or debt sources. Additionally, the development and marketing of new products could require a significant commitment of resources, which could in turn require us to obtain additional financing earlier than otherwise expected. We may not be able to obtain additional financing as needed on acceptable terms, or at all, which would force us to delay our plans for growth and implementation of our strategy which could seriously harm our business, financial condition and results of operations. If we issue additional equity or convertible debt securities to raise funds, the ownership percentage of our existing stockholders would be reduced. New investors may demand rights, preferences or privileges senior to those of existing holders of our common stock.

Subsequent Event

On January 24, 2000, we entered into a Common Stock Purchase Agreement with STMicroelectronics NV ("STM") for the private sale of 3.7 million shares of our common stock to STM at a purchase price of \$7.50 per share. The closing is subject to certain conditions including the expiration or early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended.

Upon closing of the transaction we will appoint a designee of STM to 8x8's Board of Directors. In addition, we will execute an agreement pursuant to which we will grant a non-exclusive license to certain of our technology to a subsidiary of STM, and an agreement which outlines certain joint development activities that we will conduct with said subsidiary.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our financial market risk includes risks associated with international operations and related foreign currencies. We derive a significant portion of our revenues from customers in Europe and Asia. In order to reduce the risk from fluctuation in foreign exchange rates, the vast majority of our sales are denominated in U.S. dollars. In addition, all of our arrangements with our

semiconductor foundry and assembly vendors, and with our subcontract manufacturer for our video monitoring and broadband telephony systems, are denominated in U.S. dollars. We have subsidiaries in Europe, and as such we are exposed to market risk from changes in exchange rates. We have not entered into any currency hedging activities. To date, our exposure to exchange rate volatility has not been significant, however, there can be no assurance that there will not be a material impact in the future.

Factors That May Affect Future Results

The following factors should be considered in conjunction with the information in this Report on Form 10-Q.

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

We recorded an operating loss of \$17.5 million in the nine month period ended December 31, 1999. In addition, we recorded operating losses for the year ended March 31, 1999 and in three of the four quarters in fiscal 1998. We would not have been profitable in fiscal 1998 had we not received nonrecurring license and other revenues. We expect to continue to incur operating losses for the foreseeable future, and such losses may be substantial. We will need to generate significant revenue growth to achieve profitability. Given our history of fluctuating revenues and operating losses, we cannot be certain that we will be able to achieve profitability on either a quarterly or annual basis.

Our operating results may decline from previous periods if we are unable to secure future license and other sources of revenues.

In the past, we have received substantial revenues from licensing of technology. License and other revenues, all of which were nonrecurring, were \$3.1 million and \$3.7 million for the nine month periods ended December 31, 1999 and 1998, respectively, and were \$5.5 million and \$14.5 million in the fiscal years ended March 31, 1999 and 1998, respectively. If we do not receive additional revenues from licensing of our technology in the future, our operating results may decline from previous periods.

We have discontinued our ViaTV product line and if we cannot lower expenses, our operating results may decline.

We announced in April 1999 that we would cease production of our ViaTV product line and withdraw from our distribution channels over the next several quarters. In the third quarter and nine months ended December 31, 1999, ViaTV product revenues represented approximately 8% and 18% of total product revenues, respectively. For the years ended March 31, 1999 and 1998, ViaTV revenues represented 49% and 38% of product revenues, respectively. We have been successful in selling the majority of existing ViaTV related inventories as of December 31, 1999 and, therefore, we do not anticipate any material revenues from our ViaTV product line in the future. We do not expect to be able to generate revenues from our other products to compensate for the loss of ViaTV revenues for at least the next twelve months, if at all. If we cannot adequately compensate for lower revenues with decreased manufacturing overhead expenses and with lower operating expenses, it could have a material adverse effect on our business and operating results.

Our operating results historically have been subject to increased seasonality with sales higher during our third fiscal quarter, corresponding to the Christmas shopping season. Our discontinuation of ViaTV products may result in substantially different patterns in operating results.

The growth of our business and future profitability depends on future broadband telephony revenue.

We believe that our business and future profitability will be largely dependent on widespread market acceptance of our broadband telephony products. Neither our multimedia communications semiconductor business nor our video monitoring business have provided, nor are they expected to provide, sufficient revenues to profitably operate our business. To date, we have not generated significant revenue from the sale of our broadband telephony products. If we are not able to generate significant revenues selling into the broadband telephony market, it would have a material adverse effect on our business and operating results.

The growth of our business depends on the growth of the IP telephony market.

Success of our broadband telephony product strategy assumes that there will be future demand for IP telephony systems. In order for the IP telephony market to continue to grow, several things need to occur. Telephone service providers must continue to invest in the deployment of high speed broadband networks to residential and commercial customers. IP 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 provided. IP telephony equipment must achieve the 99.999% reliability that users of the public switched telephone network have come to expect from their telephone service. IP telephony service providers must offer cost and feature benefits to their customers that are sufficient to cause the customers to switch away from traditional telephony service providers. If any or all of these factors fail to occur our business will not grow.

Our future operating results may not follow past or expected trends due to many factors and any of these could cause our stock price to fall.

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;
- competitive market conditions;
- lengthy sales cycles, 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;
- the level of international sales;
- continued compliance with industry standards; and
- general economic conditions.

Our gross margin is affected by a number of factors including, product mix, the recognition of license and other revenues for which there may be no or little corresponding cost of revenues, product pricing, the allocation between international and domestic sales, the percentage of direct sales and sales to resellers, and manufacturing and component costs. The markets for our products are characterized by falling average selling prices. We expect that, as a result of competitive pressures and other factors, gross profit as a percentage of revenue for our semiconductor products will likely decrease for the foreseeable future. The market for IP telephony semiconductors is likely to be a high volume market characterized by commodity pricing. We will not be able to generate average selling prices or gross margins for our IP telephony semiconductors similar to those that we have historically commanded for our videoconferencing semiconductors. In addition, the gross margins for our video monitoring and broadband systems products are, and will likely continue to be, substantially lower than the gross margins for our videoconferencing semiconductors. In the likely event that we encounter significant price competition in the markets for our products, we could be at a significant disadvantage compared to our competitors, many of which have substantially greater resources, and therefore may be better able to withstand an extended period of downward pricing pressure.

Variations in timing of sales may cause significant fluctuations in future operating results. In addition, because a significant portion of our business may be derived from orders placed by a limited number of large customers, including OEM customers, the timing of such orders can also cause significant fluctuations in our operating results. Anticipated orders from customers may fail to materialize. Delivery schedules may be deferred or canceled for a number of reasons, including changes in specific customer requirements or international economic conditions. 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 us or our competitors of new products and technologies could cause customers to defer purchases of our existing products, which would also have a material adverse effect on our business and operating results.

As a result of these and other factors, it is likely that in some future period our operating results will be below the expectations of securities analysts or investors, which would likely result in a significant reduction in the market price for our common stock.

We may not be able to manage our inventory levels effectively which may lead to inventory obsolescence which would force us to lower our prices.

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. For example, we had significant inventory quantities of ViaTV products, both on hand and at our retail distributors when we discontinued production in April 1999. In the fourth quarter ended March 31, 1999, cost of product revenues included a \$5.7 million charge associated with the write off of inventories related to our decision to cease production of our ViaTV product line. Excess inventory levels would subject us to the risk of inventory obsolescence and the risk that our selling prices may drop below our inventory costs, while insufficient levels of inventory may negatively affect relations with customers. Any of these factors could have a material adverse effect on our operating results and business.

We may need to raise additional capital to support our growth, and failure to do so in a timely manner may cause us to delay our plans for growth.

As of December 31, 1999, we had approximately \$21.8 million in cash and cash equivalents. We believe that we will be able to fund planned expenditures and satisfy our cash requirements for at least the next twelve months from cash flow from operations, if any, and existing cash

balances. However, we may seek to exploit business opportunities, including acquiring or investing in complementary businesses or products, that will require additional capital from equity or debt sources. Additionally, the development and marketing of new products could require a significant commitment of resources, which could in turn require us to obtain additional financing earlier than otherwise expected. We may not be able to obtain additional financing as needed on acceptable terms, or at all, which would force us to delay our plans for growth and implementation of our strategy which could seriously harm our business, financial condition and results of operations. If we issue additional equity or convertible debt securities to raise funds, the ownership percentage of our existing stockholders would be reduced. New investors may demand rights, preferences or privileges senior to those of existing holders of our common stock.

We depend on purchase orders from key customers and failure to receive significant purchase orders in the future would cause a decline in our operating results.

Historically, a significant portion of our sales have been to relatively few customers, although the composition of these customers has varied. Revenues from our ten largest customers for the third quarter and nine months ended December 31, 1999 accounted for approximately 44% and 40%, respectively, of total revenues. Revenues from our ten largest customers for the fiscal years ended March 31, 1999 and 1998 accounted for 40% and 61%, respectively, of total revenues. 3Com accounted for 20% of total revenues during the year ended March 31, 1998. Substantially all of our product sales have been made, and are expected to continue to be made, on a purchase order basis. None of our customers has entered into a long-term agreement requiring it to purchase our products. In the future, we will need to gain purchase orders for our products to earn additional revenue. Further, all of our license and other revenues are nonrecurring.

Technical and quality difficulties could impede market acceptance of our video monitoring products which would limit our growth.

Due to bandwidth constraints, certain of our video monitoring products transmit video over a plain old telephone system, which is known as POTS, at a frame rate and resolution that are significantly less than the frame rate and resolution of standard closed circuit TV monitors. Furthermore, audio transmitted over a POTS line has a fidelity that is often less than toll quality and that degrades in the presence of background noise. The POTS infrastructure varies widely in configuration and integrity, can degrade, make unreliable or even eliminate the digital connections between our video monitoring products. The security industry demands a high degree of quality, robustness and reliability of its products. Actual or perceived technical difficulties or insufficient video or audio quality could cause our existing customers to forego future purchases or cause potential customers to seek alternative solutions, either of which would limit the growth of our business.

Competition

We compete with both manufacturers of digital signal processing semiconductors and gateway products developed for the growing VoIP marketplace. We also compete with manufacturers of multimedia communication semiconductors and systems. In addition, we compete with manufacturers of PBX systems focused on small and medium size businesses. The markets for our products are characterized by intense competition, declining average selling prices and rapid technological change.

IP Telephony and Videoconferencing

The principal competitive factors in the market for IP telephony and videoconferencing semiconductors include product definition, product design, system integration, chip size, functionality, time-to-market, adherence to industry standards, price and reliability. We have a number of competitors in this market including Analog Devices, AudioCodes Ltd., Broadcom Corporation, Conexant, DSP Group, Lucent Technologies, Motorola, Inc., Neo Paradigm Labs, Philips Electronics, Texas Instruments, Inc. and Winbond Electronics. Certain of our competitors for IP telephony and videoconferencing semiconductors maintain their own semiconductor foundries and may therefore benefit from certain capacity, cost and technical advantages.

Principle competitive factors in the market for VoIP gateway products include product definition, product design, system integration, system functionality, time-to-market, interoperability with common network equipment, adherence to industry standards, price and reliability. Currently there are a large number of system suppliers offering carrier-class gateway products such as Ascend Communications, Inc., Cisco Systems, Inc., Clarent Corporation, Mediatix, NX Networks, Nokia Corporation, Nortel Networks, Nuera Communications, Inc., VocalTec Communications, and Lucent Technologies. At this time there is limited competition in the residential and small office VoIP gateway market. We expect, however, that this market will be characterized by intense competition, declining average selling price and rapid technology change. In addition, our presence in the VoIP systems business may result in certain customers or potential customers perceiving us as a competitor or potential competitor, which may be used by other semiconductor manufacturers to their advantage.

Principle competitive factors in the market for PBX products include product definition, product design, system integration, system functionality, time-to-market, interoperability with common network equipment, adherence to industry standards, price and reliability. Currently there are a number of suppliers of PBX related products and services including, but not limited to, 3Com, Cisco Systems, Inc., Coppercom, Lucent Technologies, NEC, Nortel Networks, Siemens and Tundo. We expect, however, that this market will be characterized by intense competition, declining average selling price and rapid technology change.

Video Monitoring Products

The competitive factors in the market for our video monitoring products include audio and video quality, acceptable phone line transmission rates, ability to connect and maintain stable connections, ease of use, price, access to enabling technologies, product design, time-to-market, adherence to industry standards, interoperability, strength of distribution channels, customer support, reliability and brand name. We expect intense competition for our video monitoring products. Competition is expected from:

- *Large security equipment manufacturers.* We may face intense competition for our video monitoring products from many well known, established suppliers of security equipment, such as Ademco, Pelco and Ultrek Electronics Limited who have continually reduced the cost of their products and may enter the market for lower cost video communication products.

- *Personal computer system and software manufacturers.* Potential customers for our remote surveillance module products may elect instead to buy PCs pre-equipped with video communication software capabilities or a third-party software application for use on a PC. As a result, we face or may face competition from Intel, and PC software suppliers such as Microsoft, Netscape, Javelin and Prism.

ADVIS, C-Phone Corporation, Leadtek Research, Inc., Truedox Technology Corporation and Video Communication Systems GmbH are among the companies selling low-cost products targeted specifically at the video monitoring marketplace. We expect that additional companies will introduce products that compete with our video monitoring products in the future. Certain manufacturers or potential manufacturers of low-cost videophones have licensed or purchased, or may license or purchase, our technology and semiconductors in order to do so. KME and 3Com in particular have licensed substantially all of the technology underlying our ViaTV products, and may use such technology to introduce products that compete with our video monitoring products. Each of Leadtek Research, Inc. and Truedox Technology Corporation license our technology and purchase our multimedia communication semiconductors. We aggressively license our semiconductor, software and systems technology and sell our semiconductor and system products to third parties. Thus, it is likely that other OEM customers will become competitors with respect to our video monitoring products business. Other competitors may purchase multimedia communication semiconductors and related technology from other suppliers.

Our reliance on developing vertically integrated technology, comprising systems, circuit boards, software and semiconductors, places a significant strain on us and on our research and development resources. Competitors that focus on one aspect of technology, such as systems or semiconductors, may have a considerable advantage. In addition, many of our current and potential competitors have longer operating histories, are substantially larger, and have greater financial, manufacturing, marketing, technical and other resources. Many of our competitors also have greater name recognition and a larger installed base of products. Competition in our markets may result in significant price reductions. As a result of their greater resources, many current and potential competitors may be better able to initiate and withstand significant price competition or downturns in the economy. There can be no assurance that we will be able to continue to compete effectively, and any failure to do so would have a material adverse effect on our business and operating results.

Our markets are subject to rapid technological change and we depend on new product introduction in order to maintain and grow our business.

IP telephony and video monitoring are emerging markets and are characterized by rapid changes in customer requirements, frequent introductions of new and enhanced products, and continuing and rapid technological advancement. To compete successfully in these emerging markets, as well as in the more established videoconferencing market, we must continue to design, develop, manufacture and sell new and enhanced products that provide increasingly higher levels of performance and reliability and lower cost, take advantage of technological advancements and changes, and respond to new customer requirements. Our success in designing, developing, manufacturing and selling such products will depend on a variety of factors, including:

- the identification of market demand for new products;
- product selection;
- timely implementation of product design and development;
- product performance;
- cost-effectiveness of products under development;
- effective manufacturing processes; and
- the success of promotional efforts.

We have in the past experienced delays in the development of new products and the enhancement of existing products, and such delays will likely occur in the future. If we are unable, due to resource constraints or technological or other reasons, to develop and introduce new or enhanced products in a timely manner, if such new or enhanced products do not achieve sufficient market acceptance or if such new product introductions decrease demand for existing products our operating results would decline and our business would not grow.

If we do not develop and maintain successful partnerships for broadband telephony products, we may not be able to successfully market our solutions.

We are entering into new market areas and our success is partly dependent on our ability to forge new marketing and engineering partnerships. IP telephony communications systems are extremely complex and no single company possesses all the required technology components needed to build a complete end to end solution. Partnerships will be required to augment our development programs and to assist us in marketing complete solutions to our customer base. We may not be able to develop such partnerships in the course of our product development. Even if we do establish the necessary partnerships, we may not be able to adequately capitalize on these partnerships to aid in the success of our business.

Inability to protect our proprietary technology or infringement by us of a third party's 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 abroad. We currently hold sixteen United States patents, including patents relating to programmable integrated circuit architectures, telephone control arrangements, software structures and memory architecture technology, and have a number of United States and foreign patent applications pending. We cannot predict whether such patent applications will result in an issued patent. We may not be able to protect our proprietary rights in the United States or abroad (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 and operating results.

There has been substantial litigation in the 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 systems, digital and analog circuits, software and semiconductors, increases the likelihood that third parties may claim infringement by us of their intellectual property rights. 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, and we could 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 the Company of third-party patents will not be asserted or prosecuted against the Company.

We rely on certain technology, including hardware and software licensed from third parties. The loss of, or inability to maintain, existing licenses could have a material adverse effect on our business and operating results.

The failure of IP networks to meet the reliability and quality standards required for voice communications would render our products obsolete.

Circuit-switched networks such as the public switched telephone network feature a very high reliability, with a guaranteed quality of service. The common standard for reliability of carrier-grade real-time voice communications is 99.999%, meaning that the network can be down for only a few minutes per year. In addition, such networks have imperceptible delay and consistently satisfactory audio quality. Emerging broadband IP networks such as LANs, WANs and the Internet, or emerging last mile technologies such as cable, DSL and wireless local loop will not be used for telephony unless such networks and technologies can provide reliability and quality consistent with these standards.

Our products must comply with industry standards and FCC regulations, and changes may require us to modify existing products.

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. Broadband telephony products rely heavily on standards such as H.323, SIP, SGCP, MGCP, and H.GCP 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. Furthermore, the industry has had difficulty achieving true multivendor interoperability for highly complex standards such as H.323. We also must comply with certain rules and regulations of the Federal Communications Commission 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. The failure of our products to comply, or delays in compliance, with various existing and evolving industry standards could delay or interrupt volume production of our broadband telephony products, which would have a material adverse effect on our business and operating results.

Future regulation or legislation could restrict our business or increase our cost of doing business.

At present there are few laws or regulations that specifically address access to or commerce on the Internet, including broadband 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 tariffs or imposing regulations based on encryption concerns or the characteristics and quality of products and services, 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 will seek to regulate broadband IP telephony and the Internet. In addition, large, established telecommunications companies may devote substantial lobbying efforts to influence the regulation of the broadband IP telephony market, which may be contrary to our interests.

We may transition to smaller geometry process technologies and higher levels of design integration which could disrupt our business.

We continuously evaluate the benefits, on an integrated circuit, product-by-product basis, of migrating to smaller geometry process technologies in order to reduce costs. We have commenced migration of certain future products to smaller geometry processes. We believe that the transition of our products to increasingly smaller geometries will be important for us to remain competitive. We have in the past experienced difficulty in migrating to new manufacturing processes, which has resulted and could continue to result in reduced yields, delays in product deliveries and increased expense levels. Moreover, we are dependent on relationships with our foundries and their partners to migrate to smaller geometry processes successfully. If any such transition is substantially delayed or inefficiently implemented we may experience delays in product introductions and incur increased expenses. As smaller geometry processes become more prevalent, we expect to integrate greater levels of functionality as well as customer and third-party intellectual property into our products. Some of this intellectual property includes analog components for which we have little or no experience or in-house expertise. We cannot predict whether higher levels of design integration or the use of third-party intellectual property will adversely affect our ability to deliver new integrated products on a timely basis, or at all.

If we discover product defects, we may have product-related liabilities which may cause us to lose revenues or delay market acceptance of our products.

Products as complex as those offered by us frequently contain errors, defects and functional limitations when first introduced or as new versions are released. We have in the past experienced such errors, defects or functional limitations. We sell products into markets that are extremely demanding of robust, reliable, fully functional products. Therefore delivery of products with production defects or reliability, quality or compatibility problems could significantly delay or hinder market acceptance of such products, which could damage our credibility with our customers and adversely affect our ability to retain our existing customers and to attract new customers. Moreover, such errors, defects or functional limitations could cause problems, interruptions, delays or a cessation of sales to our customers. Alleviating such problems may require significant expenditures of capital and resources by us. Despite testing by us, our suppliers or our customers may find errors, defects or functional limitations in new products after commencement of commercial production, resulting in additional development costs, loss of, or delays in, market acceptance, diversion of technical and other resources from our other development efforts, product repair or replacement costs, claims by our customers or others against us, or the loss of credibility with our current and prospective customers.

Manufacturing

We outsource the manufacturing of our semiconductors and our broadband telephony and video monitoring system products to independent foundries and subcontract manufacturers, respectively. Our primary semiconductor manufacturer is Taiwan Semiconductor Manufacturing Corporation. Subcontract manufacturers include EFA Corporation in Taiwan and Flash Electronics in Fremont, California. We also rely on Amkor/Anam Electronics in South Korea for packaging and testing of our semiconductors. We do not have long-term purchase agreements with our subcontract manufacturers or our component suppliers. There can be no assurance that our subcontract manufacturers will be able or willing to reliably manufacture our products, or that our component suppliers will be able or willing to reliably supply components for our products, in volumes, on a cost effective basis or in a timely manner. We may experience difficulties due to our reliance on independent semiconductor foundries, subcontract manufacturers and component suppliers that could have a material adverse effect on our business and operating results.

In addition, from time to time we may issue non-cancelable purchase orders to our third-party manufacturers for raw materials used in our video monitoring or other potential system-level products to ensure availability for long lead-time items or to take advantage of favorable pricing terms. If we should experience decreased demand for our video monitoring products or future system-level products, we would still be required to take delivery of and make payment for such raw materials. In the event of a significant decrease in system level product demand, such purchase commitments could have a material adverse effect on our business and operating results.

We have significant international operations, which subjects us to risks that could cause our operating results to decline.

Sales to customers outside of the United States represented 45%, 43% and 47% of total revenues in the nine months ended December 31, 1999 and the fiscal years ended March 31, 1999 and 1998, respectively. Specifically, sales to customers in the Asia Pacific region represented 21%, 26% and 25% of our total revenues in the nine months ended December 31, 1999 for the fiscal years ended March 31, 1999 and 1998, respectively, while sales to customers in Europe represented 24%, 17% and 22% of our total revenues for the same periods, respectively.

International sales of our semiconductors will continue to represent a substantial portion of our product revenues for the foreseeable future. In addition, substantially all of our current products are, and substantially all of our future products will be, manufactured, assembled and tested by independent third parties in foreign countries. International sales and manufacturing are subject to a number of risks, including general economic conditions in regions such as Asia, changes in foreign government regulations and telecommunications standards, export license requirements, tariffs and taxes, other trade barriers, fluctuations in currency exchange rates, difficulty in collecting accounts receivable and difficulty in staffing and managing foreign operations. We are also subject to geopolitical risks, such as political, social and economic instability, potential hostilities and changes in diplomatic and trade relationships, in connection with its international operations. A significant decline in demand from foreign markets, which may result from the current economic conditions in the Asia Pacific region, or for other reasons could have a material adverse effect on our business and operating results.

We need to expand our management systems and hire and retain key personnel to support our products.

The development and marketing of our broadband telephony and video monitoring products will continue to place a significant strain on our limited personnel, management and other resources. Our ability to manage any future growth effectively will require us to successfully attract, train, motivate, retain and manage employees, particularly

key engineering and sales managerial personnel, to effectively integrate new employees into our operations and to continue to improve our operational, financial and management systems. Our failure to manage growth and changes in our business effectively and to attract and retain key personnel could limit our growth and the success of our products and business.

Further, we are highly dependent on the continued service of and our ability to attract and retain qualified technical, marketing, sales and managerial personnel. The competition for such personnel is intense, particularly in the San Francisco Bay area where we are located. The loss of any key person or the failure to recruit additional key technical and sales personnel in a timely manner would have a material adverse effect on our business and operating results. We currently do not have employment contracts with any of our employees and we do not maintain key person life insurance policies on any of our employees.

Our stock price has been volatile and we cannot assure you that our stock price will not decline.

The market price of the shares of our common stock has been and is likely 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;
- loss of key personnel;
- new products or new contracts by us, our competitors or their customers;
- governmental regulatory action;
- 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 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.

PART II - OTHER INFORMATION.

ITEM 6. Exhibits and Reports on Form 8-K

- (a) See Exhibit Index.
- (b) Reports on Form 8-K.

On November 9, 1999, we filed a Current Report on Form 8-K reporting that we announced the appointment of Lee Camp and Joseph Markee to our Board of Directors effective October 21, 1999.

On December 23, 1999, we filed a Current Report on Form 8-K reporting that we had completed a \$7.5 million private placement of subordinated Series A and Series B convertible debentures with funds managed by an institutional investor effective December 17, 1999.

8X8, INC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: February 14, 2000

(Registrant)
By: /s/ DAVID STOLL

EXHIBIT INDEX

David M. Stoll
Chief Financial Officer and Vice President of Finance
(Principal Financial and Accounting Officer)

All other schedules are omitted because they are not required,
are not applicable or the information is included in the Condensed Consolidated Financial
Statements or notes thereto.

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of December 15, 1999, is made by and among 8x8, Inc., a Delaware corporation, with headquarters located at 2445 Mission College Blvd., Santa Clara, California 95054 (the "**Company**"), and the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

WHEREAS:

A. The Company and the Buyers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the Securities Act of 1933, as amended (the "**1933 Act**").

B. The Company has authorized two series of convertible notes of the Company, the Series A Convertible Notes in the form attached as Exhibit A (together with any convertible notes issued in replacement thereof in accordance with the terms thereof, the "**Series A Notes**") and the Series B Convertible Notes in the form attached as Exhibit B (together with any convertible notes issued in replacement thereof in accordance with the terms thereof, the "**Series B Notes**," and collectively with the Series A Notes, the "**Notes**"), which Notes shall be convertible into shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**") (as converted, the "**Conversion Shares**"), in accordance with the terms of such Convertible Notes.

C. The Buyers wish to purchase, upon the terms and conditions stated in this Agreement, (i) Series A Notes in an aggregate principal amount of up to \$3,750,000 in the respective amounts set forth opposite each Buyer's name on the Schedule of Buyers, (ii) Series B Notes in an aggregate principal amount of up to \$3,750,000 in the respective amounts set forth opposite each Buyer's name on the Schedule of Buyers, (iii) for each Series A Note, Series A Warrants (the "**Series A Warrants**") to purchase up to that number of shares of Common Stock equal to the quotient of (A) the aggregate principal amount of such Series A Note divided by (B) the applicable Conversion Price (as defined in the Series A Note) of such Series A Note (as exercised, the "**Series A Warrant Shares**"), such Series A Warrants to be substantially in the form attached as Exhibit C and (iv) for each Series B Note, Series B Warrants (the "**Series B Warrants**") and collectively with the Series A Warrants, the "**Warrants**") to purchase up to that number of shares of Common Stock equal to the quotient of (A) the aggregate principal amount of such Series B Note divided by (B) the applicable Conversion Price (as defined in the Series B Note) of such Series B Note (as exercised, the "**Series B Warrant Shares**" and collectively with the Series A Warrant Shares, the "**Warrant Shares**"), such Series B Warrants to be substantially in the form attached as Exhibit C.

D. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement substantially in the form attached hereto as Exhibit D (the "**Registration Rights Agreement**") pursuant to which the Company has agreed to provide certain registration rights under the 1933 Act, and the rules and regulations promulgated thereunder, and applicable state securities laws.

NOW THEREFORE, the Company and the Buyers hereby agree as follows:

1. PURCHASE AND SALE OF NOTES.

a. Purchase of Notes and Warrants. Subject to satisfaction (or waiver) of the conditions set forth in Sections 6 and 7, the Company shall issue and sell to each Buyer and each Buyer severally agrees to purchase from the Company the Series A Notes and the Series B Notes, each in the principal amount as set forth opposite such Buyer's name on the Schedule of Buyers, along with the related Warrants (the "**Closing**"). The aggregate purchase price of the Notes and the related Warrants at the Closing shall be \$7,500,000 with the purchase price for each Buyer (the "**Purchase Price**") of the Notes and related Warrants is as indicated opposite such Buyer's name on the Schedule of Buyers.

b. The Closing Date. The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m. Central Time, within three (3) Business Days (as defined below) following the date hereof, subject to satisfaction (or waiver) of the conditions to the Closing set forth in Sections 6 and 7 (or such later date as is mutually agreed to by the Company and the Buyers). The Closing shall occur on the Closing Date at the offices of Katten Muchin & Zavis, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60661-3693. "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

c. Form of Payment. On the Closing Date (i) each Buyer shall pay its pro rata portion of the Purchase Price to the Company for the Notes and the related Warrants to be issued and sold to such Buyer by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) the Company shall deliver to each Buyer Notes (in the principal amounts as such Buyer shall request) (the "**Note Certificates**") representing such principal amount of the Notes which such Buyer is then purchasing (as indicated opposite such Buyer's name on the Schedule of Buyers) along with the related Warrants, duly executed on behalf of the Company and registered in the name of such Buyer.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer represents and warrants with respect to only itself that:

a. Investment Purpose. Such Buyer (i) is acquiring the Notes and the Warrants, (ii) upon conversion of the Notes, will acquire the Conversion Shares then issuable and (iii) upon exercise of the Warrants, will acquire the Warrant Shares issuable upon exercise thereof (the Notes, the Warrants, the Conversion Shares and the Warrant Shares, collectively are referred to herein as the "**Securities**"), for its own account for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that by making the representations contained in this Section 2(a), such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

b. Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

c. Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

d. Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained in Sections 3 and 9(m) below. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

e. No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

f. Transfer or Resale. Such Buyer understands that except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel, in a generally acceptable form, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 promulgated under the 1933 Act (or a successor rule thereto) ("**Rule 144**") or (D) transferred in accordance with Rule 144A under the 1933 Act (or any successor rule thereto) ("**Rule 144A**") to a qualified institutional buyer (as such term is defined in Rule 144A, and further referred to as a "**QIB**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register such Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan secured by the Securities.

g. Legends. Such Buyer understands that the certificates or other instruments representing the Notes and the Warrants and, until such time as the sale of the Conversion Shares and the Warrant Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement, the stock certificates representing the Conversion Shares and the Warrant Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO EITHER RULE 144A UNDER SAID ACT TO A QUALIFIED INSTITUTIONAL BUYER OR RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY THE SECURITIES.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped, if (i) such Securities are registered for sale under the 1933 Act, (ii) in connection with a sale transaction, such holder provides the Company with an opinion of counsel, in a generally acceptable form to the Company, to the effect that a public sale, assignment or transfer of such Securities may be made without registration under the 1933 Act, or (iii) such holder provides the Company with a representation letter in the form attached hereto as Exhibit E (a "**Representation Letter**") relating to the

sale of the Securities pursuant to Rule 144. Such Buyer acknowledges, covenants and agrees to sell the Securities represented by a certificate(s) from which the legend has been removed, only pursuant to (i) a registration statement effective under the 1933 Act, or (ii) advice of counsel that such sale is exempt from registration required by Section 5 of the 1933 Act.

h. Authorization; Enforcement. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and are valid and binding agreements of such Buyer enforceable against such Buyer in accordance with their terms, subject as to enforceability to general principles of equity and to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

i. Residency. Such Buyer is a resident of that jurisdiction specified on the Schedule of Buyers.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that:

a. Organization and Qualification. The Company and its "**Subsidiaries**" (which for purposes of this Agreement means any entity in which the Company, directly or indirectly, owns more than 20% of the aggregate voting power of such entity) are corporations duly organized and validly existing in good standing under the laws of the jurisdiction in which they are incorporated, and have the requisite corporate power and authorization to own properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, operations, results of operations or financial condition of the Company and its Subsidiaries taken as a whole, or on the transactions contemplated hereby or by the agreements and instruments to be entered into in connection herewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents (as defined below). Except as set forth on Schedule 3(a), the Company does not, directly or indirectly, own any capital stock or hold an equity or similar interest in any entity.

b. Authorization; Enforcement; Compliance with Other Instruments. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined in Section 5), the Notes, the Warrants and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "**Transaction Documents**"), and to issue the Securities in accordance with the terms thereof, (ii) the execution and delivery of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby, including without limitation the issuance of the Notes and the Warrants and the reservation for issuance and the issuance of the Conversion Shares and the Warrant Shares issuable upon conversion or exercise thereof, have been duly authorized by the Company's Board of Directors and no further consent or authorization is required by the Company, its Board of Directors or its stockholders, (iii) the Transaction Documents have been duly executed and delivered by the Company, and (iv) the Transaction Documents, constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies.

c. Capitalization. The authorized capital stock of the Company consists of (i) 40,000,000 shares of Common Stock, of which, as of December 10, 1999, 18,539,338 shares were issued and outstanding, 548,614 shares were issuable and reserved for issuance pursuant to the Company's stock option and purchase plans and, except as disclosed in Schedule 3(c), no shares are issuable and reserved for issuance pursuant to securities (other than the Notes and the Warrants) exercisable or exchangeable

for, or convertible into, shares of Common Stock and (ii) 5,000,000 shares of preferred stock, of which as of the date hereof, no shares were issued and outstanding. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Except as disclosed in Schedule 3(c), (i) no shares of the Company's capital stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding debt securities issued by the Company; (iii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its Subsidiaries; (iv) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except the Registration Rights Agreement); (v) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities as described in this Agreement; and (vii) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The Company has furnished to the Buyer true and correct copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**"), and the Company's By-laws, as in effect on the date hereof (the "**By-laws**"), and the terms of all securities convertible into or exercisable for Common Stock and the material rights of the holders thereof in respect thereto.

d. Issuance of Securities. The Notes and the Warrants are duly authorized and, upon issuance in accordance with the terms hereof, shall be free from all taxes, liens and charges with respect to the issue thereof. At least 2,750,000 shares of Common Stock (subject to adjustment pursuant to the Company's covenant set forth in Section 4(h) below) have been duly authorized and reserved for issuance upon conversion of the Notes and upon exercise of the Warrants. Upon conversion or exercise in accordance with the Notes or the Warrants, as the case may be, the Conversion Shares and the Warrant Shares will be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming, with respect to the issuance of Warrant Shares other than a Cashless Exercise (as defined in Section 2(d) of the Warrant), the accuracy as to factual matters of the representations set forth in Section 6 of the Warrant, the issuance by the Company of the Securities is exempt from registration under the 1933 Act.

e. No Conflicts. Except as disclosed in Schedule 3(e), the execution, delivery and performance of the Transaction Documents by the Company, the performance by the Company of its obligations under the Notes and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the reservation for issuance and issuance of the Conversion Shares and the Warrant Shares) will not (i) result in a violation of the Certificate of Incorporation, any Certificate of Designations, Preferences and Rights of any outstanding series of preferred stock of the Company or the By-laws; (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party; or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the Principal Market (as defined below)) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected. Except as disclosed in Schedule 3(e), neither the Company nor its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any Certificate of Designations, Preferences and Rights of any outstanding series of preferred stock of the Company or By-laws or their organizational charter or by-laws, respectively. Except as disclosed in Schedule 3(e), neither the Company or any of its Subsidiaries is in violation of any term of or in default under any contract, agreement, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company or its Subsidiaries, except for possible conflicts, defaults, terminations or amendments which would not have, individually or in the aggregate, a Material Adverse Effect. The business of the Company and its Subsidiaries is not being conducted, and shall not be conducted, in violation of any law, ordinance or regulation of any governmental entity, except for possible violations the sanctions for which either, individually or in the aggregate, would not have a Material Adverse Effect. Except as specifically contemplated by this Agreement and except such as have been obtained as of the date hereof, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents in accordance with the terms hereof or thereof. Except as disclosed in Schedule 3(e), all consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not in violation of the listing requirements of the Principal Market, including without

limitation, the requirements set forth in Rule 4310(c)(25)(H) of the Nasdaq National Market as in effect on the date hereof and on the Closing Date and has no actual knowledge of any facts which would reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future.

f. SEC Documents: Financial Statements.

Since March 31, 1998, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"). The Company has delivered to the Buyers or their respective representatives true and complete copies of the SEC Documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Neither the Company nor any of its Subsidiaries or any of their officers, directors, employees or agents have provided the Buyers with any material, nonpublic information. The Company meets the requirements for the use of Form S-3 for registration of the resale of the Registrable Securities (as defined in the Registration Rights Agreement) by each Buyer.

g. Absence of Certain Changes. Except as

disclosed in Schedule 3(g) or in the SEC Documents filed with the SEC through EDGAR at least five (5) days prior to the date of this Agreement, since March 31, 1999 there has been no material adverse change and no material adverse development in the business, properties, operations, financial condition, liabilities or results of operations of the Company or its Subsidiaries, taken as a whole. The Company has not taken any steps, and does not currently expect to take any steps, to seek protection pursuant to any bankruptcy law nor does the Company or any of its Subsidiaries have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings. Except as disclosed in Schedule 3(g) or in the SEC Documents filed with the SEC through EDGAR at least five (5) days prior to the date of this Agreement, since March 31, 1999, the Company has not declared or paid any dividends, sold any assets (not including inventory) in excess of \$1,000,000 outside of the ordinary course of business or had capital expenditures in excess of \$1,000,000.

h. Absence of Litigation. Except as

disclosed in Schedule 3(h), there is no action, suit, proceeding, inquiry or investigation, before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company, the Common Stock or any of the Company's Subsidiaries or any of the Company's or the Company's Subsidiaries' officers or directors in their capacities as such. Except as set forth in Schedule 3(h), to the knowledge of the Company, none of the directors or officers of the Company have been involved in securities-related litigation during the past five years.

i. Acknowledgment Regarding the Buyer's

Purchase of Notes. The Company acknowledges and agrees that each of the Buyers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that each Buyer is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any of the Buyers or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives and the representations and warranties made by each Buyer in Section 2 hereof.

j. No General Solicitation. Neither the

Company, nor any of its affiliates, nor any person acting on its or their

behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the 1933 Act) in connection with the offer or sale of the Securities.

k. No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Nasdaq National Market, nor will the Company or any of its Subsidiaries take any action or steps that would require registration of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings.

l. Employee Relations. Neither the Company nor any of its Subsidiaries is involved in any union labor dispute nor, to the knowledge of the Company or any of its Subsidiaries, is any such dispute threatened. None of the Company's or its Subsidiaries' employees is a member of a union and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) of the 1933 Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company and the Company does not expect to terminate any such officer during the six months following the date hereof.

m. Intellectual Property Rights. Except as set forth in Schedule 3(m), the Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights necessary to conduct their respective businesses as now conducted. Except as set forth on Schedule 3(m), none of the trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets or other intellectual property rights (collectively, the "**Intellectual Property**") of the Company have expired or terminated, or are expected to expire or terminate within two years from the date of this Agreement, except where such expiration or termination would not result, individually or in the aggregate, in a Material Adverse Effect. Except as set forth in Schedule 3(m), the Company and its Subsidiaries do not have any knowledge of any infringement by the Company or its Subsidiaries of the Intellectual Property of others. Except as set forth on Schedule 3(m), to the Company's knowledge no administrative or court action or proceeding has been made or brought against, or to the Company's knowledge, has been threatened against, the Company or its Subsidiaries regarding the infringement of the Intellectual Property of others. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of their intellectual properties.

n. Environmental Laws. The Company and its Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the three foregoing cases, the failure to so comply would have, individually or in the aggregate, a Material Adverse Effect.

o. Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described in Schedule 3(o) or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company and any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

p. Tax Status. The Company and each of its Subsidiaries has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is

subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which the Company has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

q. Transactions With Affiliates. Except as set forth on Schedule 3(g), and in the SEC Documents filed at least ten days prior to the date hereof and other than the grant of stock options disclosed on Schedule 3(c), none of the officers, directors, or employees of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

r. Application of Takeover Protections. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation or the laws of the state of its incorporation which is or could become applicable to the Buyers as a result of the Buyers and the Company fulfilling their obligations under the Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Buyers' ownership of the Securities.

s. Shareholders Rights Plan. As of the date hereof, the Company has not adopted a shareholder rights plan or similar arrangement relating to accumulation of beneficial ownership of Common Stock or a change in control of the Company.

t. Foreign Corrupt Practices. Neither the Company, nor any of its Subsidiaries, nor, to the Company's knowledge, any director, officer, agent, employee or other person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

u. Year 2000 Compliance. The Company has initiated a review and assessment of all areas within its and each Subsidiary's business and operations that could be adversely affected by the "**Year 2000 Problem**" (that is, the risk that computer applications used by the Company or any of the Subsidiaries may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any date after December 31, 1999). Based on the foregoing, the Company believes that the computer applications that are currently material to its or any Subsidiary's business and operations are reasonably expected to be able to perform properly date-sensitive functions for all dates before and after January 1, 2000.

v. No Other Agreements. The Company has not, directly or indirectly, made any agreements with any Buyer relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents.

4. COVENANTS.

a. Best Efforts. Each party shall use its best efforts timely to satisfy each of the conditions to be satisfied by it as provided in Sections 6 and 7 of this Agreement.

b. Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary to qualify the Securities for, or obtain exemption for the Securities for, sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States following the Closing Date.

c. Reporting Status. Until the earlier of (i) the date which is one year after the date on which the Investors (as that term is defined in the Registration Rights Agreement) may sell all of the Conversion Shares and the Warrant Shares without restriction pursuant to Rule 144(k) promulgated under the 1933 Act (or successor thereto) and (ii) the date on which (A) the Investors shall have sold all the Conversion Shares and the Warrant Shares and (B) none of the Notes or the Warrants is outstanding (the "**Reporting Period**"), the Company shall file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would otherwise permit such termination.

d. Use of Proceeds. The Company will use the proceeds from the sale of the Notes for substantially the same purposes and in substantially the same amounts as indicated in Schedule 4(d).

e. Financial Information. The Company agrees to send the following to each Investor (as defined in the Registration Rights Agreement) during the Reporting Period (i) within two (2) Business Days after the filing thereof with the SEC, unless available through the EDGAR system, a copy of its Annual Reports on Form 10-K, its Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act and (ii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders. During the Reporting Period, the Company shall include each Investor on the Company's distribution list for press releases and shall provide each Investor with any such press releases in the same manner and at the same time as others on such distribution list.

f. Additional Registration Statements; Right of First Refusal. The Company shall not file a registration statement (other than the Registration Statement (as defined in the Registration Rights Agreement), a registration statement on Form S-8 or a resale registration statement covering not more than 134,000 shares of Common Stock required to be filed pursuant to the terms of the Loan and Stock Restriction Agreement, dated May 18, 1999, relating to the Company's acquisition of Odisei S.A.) covering the sale or resale of shares of Common Stock with the SEC during the period beginning on the date hereof and ending on, and including, the date on which the Registration Statement has been declared effective by the SEC.

Subject to the exceptions described below, during the period beginning on the date hereof and ending on, and including, the date which is six months after the Closing Date, the Company and its Subsidiaries shall not negotiate or contract with any party for any equity financing (including any debt financing with an equity component) or issue any equity securities of the Company or any Subsidiary or securities convertible into or exchangeable for equity securities of the Company or any Subsidiary (including debt securities with an equity component) in any form ("**Future Offerings**"), unless it shall have first delivered to each Buyer, or a designee appointed by such Buyer, a written notice (the "**Future Offering Notice**") describing the proposed Future Offering, including the size, terms and conditions thereof, and providing each Buyer an option to purchase up to its Aggregate Percentage (as defined below) of the securities to be issued in such Future Offering, as of the date of delivery of the Future Offering Notice, in the Future Offering on the same terms and conditions set forth in the Future Offering Notice. The limitations referred to in this Section 4(f) are collectively referred to as the "**Capital Raising Limitations**." For purposes of this Section 4(f), "**Aggregate Percentage**" at any time with respect to any Buyer shall mean the percentage obtained by the quotient of (i) the aggregate principal amount of the Notes issued to such Buyer on the Closing Date by (ii) the aggregate principal amount of the Notes issued to all Buyers on the Closing Date. A Buyer can exercise its

option to participate in a Future Offering by delivering written notice thereof to participate to the Company within ten (10) Business Days after receipt of a Future Offering Notice, which notice shall state the quantity of securities being offered in the Future Offering that such Buyer will purchase, up to its Aggregate Percentage, and that number of securities it is willing to purchase in excess of its Aggregate Percentage. In the event that one or more Buyers fail to elect to purchase up to each such Buyer's Aggregate Percentage of the Future Offering, then each Buyer which has indicated that it is willing to purchase a number of securities in such Future Offering in excess of its Aggregate Percentage shall be entitled to purchase up to its pro rata portion (determined in the same manner as described in the preceding sentence) of the securities in the Future Offering which one or more of the Buyers have not elected to purchase. In the event the Buyers fail to elect to fully participate in the Future Offering within the periods described in this Section 4(f), the Company shall have 60 days thereafter to sell the securities of the Future Offering that the Buyers did not elect to purchase, upon terms and conditions, no more favorable to the purchasers thereof than specified in the Future Offering Notice. In the event the Company has not sold such securities of the Future Offering within such 60 day period, the Company shall not thereafter issue or sell such securities without first offering such securities to the Buyers in the manner provided in this Section 4(f). The Capital Raising Limitations shall not apply to (i) a loan from a commercial bank, (ii) the Company's issuances of securities (A) as consideration in a merger or consolidation (B) in connection with any strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (iii) the issuance of Common Stock in a firm commitment, underwritten public offering, (iv) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the date hereof provided the terms of such securities are not amended after the date hereof, and (v) the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option plan, restricted stock plan or stock purchase plan for the benefit of the Company's employees, officers or directors for services provided to the Company. The Buyers shall not be required to participate or exercise their right of first refusal with respect to a particular Future Offering in order to exercise their right of first refusal with respect to later Future Offerings.

g. Right of Participation. Subject to the exceptions described below, during the period beginning on the date which is six months after the Closing Date and ending on and including the date which is one year after the Closing Date, the Company and its Subsidiaries shall not contract with any party for any equity financing (including any debt financing with an equity component) or issue any equity securities of the Company or any Subsidiary or securities convertible into or exchangeable for equity securities of the Company or any Subsidiary (including debt securities with an equity component) in any form ("**Participation Offering**"), unless it shall have first delivered to each Buyer, or a designee appointed by such Buyer, a written notice (the "**Participation Offering Notice**") describing the proposed Participation Offering, including the size, terms and conditions thereof, and providing each Buyer an option to purchase up to its Aggregate Participation Percentage (as defined below) of the securities to be issued in such Participation Offering, as of the date of delivery of the Participation Offering Notice, in the Participation Offering on the same terms and conditions as set forth in the Participation Offering Notice. The limitations referred to in this sentence are collectively referred to as the "**Participation Raising Limitations**". For purposes of this Section 4(g), "**Aggregate Participating Percentage**" at any time with respect to any Buyer shall mean the percentage obtained by multiplying (I) 50% by (II) the quotient of (i) the aggregate principal amount of the Notes issued to such Buyer on the Closing Date by (ii) the aggregate principal amount of the Notes issued to all the Buyers on the Closing Date. A Buyer can exercise its option to participate in a Participation Offering by delivering written notice thereof to participate to the Company within ten (10) business days after receipt of a Participation Offering Notice, which notice shall state the quantity of securities being offered in the Participation Offering that such Buyer will purchase, up to its Aggregate Participating Percentage, and that number of securities it is willing to purchase in excess of its Aggregate Participating Percentage. In the event that one or more Buyers fail to elect to purchase up to each such Buyer's Aggregate Participating Percentage of the Participation Offering, then each Buyer which has indicated that it is willing to purchase a number of securities in such Participation Offering in excess of its Aggregate Participating Percentage shall be entitled to purchase up to its pro rata portion (determined in the same manner as described in the preceding sentence) of the securities in the Participation Offering which one or more of the Buyers have not elected to purchase. In the event the Buyers fail to elect to fully participate in the Participation Offering within the periods described in this Section 4(g), the Company shall have 60 days thereafter to sell the securities of the Participation Offering that the Buyers did not elect to purchase, upon terms and conditions, no more favorable to the purchasers thereof than specified in the Participation Offering Notice. In the event the Company has not sold such securities of the Participation Offering within such 60 day period, the Company shall not thereafter issue or sell such securities without first offering such securities to the Buyers in the manner provided in this Section 4(g). The Participation Raising Limitations shall not apply to (i) a loan from a commercial bank, (ii) the Company's issuances of securities (A) as consideration in a merger or consolidation, (B) in connection with any strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (iii) the issuance of Common Stock in a firm commitment, underwritten public offering, (iv) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the date hereof provided the terms of such securities are not amended after the date hereof and (v) the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option plan, restricted stock plan or stock purchase plan for the benefit of the Company's employees, officers or directors for services provided to the Company. The Buyers shall not be required to participate or exercise their right of participation with respect to any particular Participation Offering in

order to exercise their right of participation with respect to later Participation Offerings.

h. Reservation of Shares. The Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than the sum of (A) 115% of the number of shares of Common Stock needed to provide for the issuance of the Conversion Shares and (B) the number of shares of Common Stock needed to provide for the issuance of the Warrant Shares (without regard to any limitations on conversions or exercise thereof).

i. Listing. The Company shall promptly secure the listing of all of the Registrable Securities (as defined in the Registration Rights Agreement) upon each national securities exchange and automated quotation system (including the Nasdaq National Market ("NNM")), if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents. The Company shall maintain the Common Stock's authorization for listing on the NNM or the New York Stock Exchange ("NYSE"). Neither the Company nor any of its Subsidiaries shall take any action which may result in the delisting or suspension of the Common Stock on the NNM or NYSE (other than to switch listings from the NNM to NYSE). The Company shall promptly, and in no event later than the following Business Day, offer to provide to such Buyer copies of any notices it receives from the NNM or NYSE regarding the continued eligibility of the Common Stock for listing on such automated quotation system or securities exchange, provided that such notices shall not contain any material non-public information. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(h).

j. Expenses. The Company shall pay an expense allowance of up to \$50,000 to the Buyers or their designees, which amount shall be withheld from the Purchase Price and the Buyers shall promptly remit any amount in excess of actual expenses incurred and, at the request of the Company, invoices or statements for such expenses.

k. Filing of Form 8-K. On or before the fifth (5th) Business Day following the Closing Date, the Company shall file a Form 8-K with the SEC describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act.

l. Proxy Statement. The Company shall provide each stockholder entitled to vote at the next annual meeting of stockholders of the Company to occur after the Proxy Statement Trigger Date (the "**Stockholder Meeting Deadline**"), a proxy statement, which has been previously reviewed by the Buyers and a counsel of their choice, soliciting each such stockholder's affirmative vote at such annual stockholder meeting for approval of the Company's issuance of all of the Securities as described in this Agreement in accordance with applicable law and the rules and regulations of the NNM, and the Company shall use its best efforts to solicit its stockholders' approval of such issuance of the Securities and cause the Board of Directors of the Company to recommend to the stockholders that they approve such proposal. If the Company fails to hold a meeting of its stockholders by the Stockholder Meeting Deadline, then, as partial relief (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of Notes an amount in cash equal to the product of (i) the principal amount of Notes held by such holder of Notes multiplied by (ii) .015 multiplied by (iii) the quotient of (x) the number of days after the Stockholder Meeting Deadline and prior to the date that a meeting of the Company's stockholders is held, divided by (y) 30. The Company shall make the payments referred to in the immediately preceding sentence within five days of the earlier of (I) the holding of the meeting of the Company's stockholders and (II) the last day of each 30-day period beginning on the Stockholder Meeting Deadline. The "**Proxy Statement Trigger Date**" shall mean the date which is 90 days after the Closing Date, if on such date the sum of (i) 115% of the number of Conversion Shares issued or issuable upon conversion of the Notes (without regards to any limitations on conversions) and (ii) the number of Warrant Shares issued or issuable upon exercise of the Warrants (without regards to any limitations on exercise), each based on the Conversion Price or Warrant Exercise Price in effect on the date of such determination, is greater than or equal to 20% of the number of shares of Common Stock issued and outstanding immediately prior to the Closing.

m. Corporate Existence. So long as any Buyer beneficially owns any Notes or Warrants, the Company shall maintain its corporate existence and shall not sell all or substantially all of the Company's assets, except in the event of a merger or consolidation or sale of all or substantially all of the Company's assets, where the surviving or successor entity in such transaction (A) assumes the Company's obligations hereunder and

under the agreements and instruments entered into in connection herewith and (B) is a publicly traded corporation whose common stock is listed for trading on the NNM or NYSE.

n. Trading Restrictions. Each Buyer agrees that during the five (5) trading days immediately preceding each of (i) the Closing Date, (ii) the date which is 36 trading days after the Closing Date and (iii) the date which is 90 days after the Closing Date, it shall not sell any shares of Common Stock including by way of any "short sales" of the Common Stock (as defined in Rule 3b-3 of the 1934 Act).

5. TRANSFER AGENT INSTRUCTIONS.

The Company shall issue irrevocable instructions to its transfer agent, and any subsequent transfer agent, to issue certificates, registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares and the Warrant Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Notes or exercise of the Warrants (in the form attached hereto as Exhibit E, the "**Irrevocable Transfer Agent Instructions**"). Prior to registration of the Conversion Shares and the Warrant Shares under the 1933 Act, all such certificates shall bear the restrictive legend specified in Section 2(g) of this Agreement. The Company warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5, and stop transfer instructions to give effect to Section 2(f) hereof (in the case of the Conversion Shares and the Warrant Shares, prior to registration of the Conversion Shares and the Warrant Shares under the 1933 Act) will be given by the Company to its transfer agent with respect to the Securities and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the Registration Rights Agreement. Nothing in this Section 5 shall affect in any way each Buyer's obligations and agreements set forth in Section 2(g) to comply with all applicable prospectus delivery requirements, if any, upon resale of the Securities. If a Buyer provides the Company with an opinion of counsel, in a generally acceptable form to the Company, to the effect that a public sale, assignment or transfer of the Securities may be made without registration under the 1933 Act or such Buyer provides the Company with a Representation Letter (as defined in Section 2(g)) relating to the sale of the Securities pursuant to Rule 144, the Company shall permit the transfer, and, in the case of the Conversion Shares and the Warrant Shares, promptly instruct its transfer agent to issue one or more certificates in such name and in such denominations as specified by such Buyer and without any restrictive legends. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Buyers by vitiating the intent and purpose of the transaction contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5, that the Buyers shall be entitled, in addition to all other available remedies, to an injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL. The obligation of the Company hereunder to issue and sell the Notes and the related Warrants to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of this Agreement and the Registration Rights Agreement and delivered the same to the Company.

(b) Such Buyer shall have delivered to the Company the Purchase Price for the Notes and the related Warrants being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(c) The representations and warranties of such Buyer contained herein shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and such Buyer shall have performed, satisfied and complied with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO

PURCHASE. The obligation of each Buyer hereunder to purchase the Notes and the related Warrants at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for such Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company and each Buyer with prior written notice thereof:

(a) The Company shall have executed each of the Transaction Documents, and delivered the same to such Buyer.

(b) The Common Stock shall be designated for quotation on the NNM or listed on NYSE, and shall not have been suspended from trading on or delisted from such exchanges nor shall delisting or suspension by such exchanges have been threatened either (A) in writing by such exchanges or (B) by falling below the minimum listing maintenance requirements of such exchanges and the Company has complied with the listing requirements of the NNM for the Conversion Shares and the Warrant Shares issuable upon conversion or exercise of the Notes and the Warrants, as the case may be.

(c) The representations and warranties of the Company contained herein shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as such Buyer may reasonably request, including, without limitation, an update as of the Closing Date regarding the representation contained in Section 3(c) above.

(d) Such Buyer shall have received the opinion of Wilson Sonsini Goodrich & Rosati dated as of the Closing Date, in substantially the form of Exhibit G attached hereto.

(e) The Company shall have executed and delivered to such Buyer the Note Certificates and the Warrants being purchased by such Buyer at the Closing.

(f) The Board of Directors of the Company shall have adopted resolutions consistent with Section 3(b)(ii) above and in a form reasonably acceptable to such Buyer (the "**Resolutions**").

(g) As of the Closing Date, the Company shall have reserved out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Notes and exercise of the Warrants, at least 2,750,000 shares of Common Stock.

(h) The Irrevocable Transfer Agent Instructions, in the form of Exhibit F attached hereto, shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(i) The Company shall have delivered to such Buyer a certificate evidencing the incorporation and good standing of the Company and each United States Subsidiary in such corporation's state of incorporation issued by the Secretary of State of such state of incorporation as of a date within ten (10) days of the Closing Date.

(j) The Company shall have delivered to such Buyer a secretary's certificate certifying as to (A) the Resolutions, (B) the Certificate of Incorporation and (C) the By-laws, each as in effect at the Closing Date.

(k) The Company shall have delivered to such Buyer a certified copy of its Certificate of Incorporation as certified by the Secretary of State of the State of Delaware within ten days of the Closing Date.

(l) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of a date within five (5) days of the Closing Date.

(m) The Company shall have made all filings under all applicable federal and state securities laws necessary to consummate the issuance of the Securities pursuant to this Agreement in compliance with such laws.

(n) The Company shall have delivered to such Buyer such other documents relating to the transactions contemplated by the Transaction Documents as such Buyer or its counsel may reasonably request.

8. **INDEMNIFICATION.** In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each other holder of the Securities and all of their stockholders, officers, directors, employees and direct or indirect investors and any of the foregoing persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action and suits and from any claims, losses, costs, penalties, fees, liabilities and damages, and expenses actually suffered or actually paid by such Indemnitee in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated thereby, provided such Indemnitee notifies the Company of its claim for indemnification under this Section 8 for such misrepresentation or breach of a representation or warranty on or before the date which is one (1) year after the date of this Agreement, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee (other than a cause of action, suit or claim which is (x) brought or made by the Company and (y) is not a shareholder derivative suit) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities or (iii) solely the status of such Buyer or holder of the Securities as an investor in the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

Any controversy, claim or dispute arising between the Company and an Indemnitee concerning the existence, scope or amount of any Indemnified Liability shall be determined by arbitration in the City of Chicago by one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "**Arbitration Rules**"). Such arbitrator shall be selected by mutual agreement of the Company and such Indemnitee in accordance with the Arbitration Rules. In the event the Company and such Indemnitee cannot agree on the selection of the arbitrator within 30 days, the American Arbitration Association shall nomination three persons. Each of the Company and the Indemnitee shall be entitled to strike one of such three nominees on a peremptory basis within 10 days after its receipt of such list of nominees, indicating its order of preference with respect to the remaining nominees. If two such nominees have been stricken by the parties, the unstricken nominee shall be the arbitrator. Otherwise, the selection of the arbitrator shall be made by the American Arbitration Association from the remaining nominees in accordance with the parties' mutual order of preference, or by random selection in the absence of a mutual order of preference. The arbitrator shall base its award on applicable law and judicial precedent, shall include such award findings of fact and conclusions of law upon which the award is based and shall not grant any remedy or relief that a court could not grant

under applicable law. The arbitrator's award and findings shall be for purposes of this Section 8 only and shall not in any way limit or prejudice any other rights that the Company or such Indemnitee under this Agreement or the other Transaction Documents or under any applicable law.

9. GOVERNING LAW; MISCELLANEOUS.

a. Governing Law; Jurisdiction; Jury Trial.

The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in Cook County, the City of Chicago, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection herewith or arising out of this Agreement or any transaction contemplated hereby.

b. Counterparts. This Agreement may be

executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

c. Headings. The headings of this

Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

d. Severability. If any provision of this

Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

e. Entire Agreement; Amendments. This

Agreement supersedes all other prior oral or written agreements between the Buyers, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Buyers which purchased a majority of the aggregate principal amount of the Notes on the Closing Date or, if prior to the Closing Date, the Buyers listed on the Schedule of Buyers as being obligated to purchase a majority of the aggregate principal amount of the Notes proposed to be issued at the Closing. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Notes or Warrants then outstanding. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents or holders of the Notes as the case may be.

f. Notices. Any notices, consents, waivers

or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered (i)

upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

8x8, Inc.

2445 Mission College Blvd.

Santa Clara, California 95054

Telephone: (408) 727-1885

Facsimile: (408) 933-0234

Attention: Chief Executive Officer

With a copy to:

Wilson Sonsini Goodrich & Rosati, Professional
Corporation

650 Page Mill Road

Palo Alto, California 94304-1050

Telephone: 650-493-9300

Facsimile: 650-493-6811

Attention: John T. Sheridan, Esq.

If to the Transfer Agent:

American Stock Transfer & Trust Company

12039 W. Alameda Parkway, Suite Z-2

Lakewood, Colorado 80228

Telephone: 303-986-5400

Facsimile: 303-986-2444

Attention: John Harmann

If to a Buyer, to it at the address and facsimile number set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers, or at such other address and/or facsimile number and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communications, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

g. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes. The Company shall not assign this Agreement or any rights without the prior written consent of the holders of a majority of the aggregate principal amount of the Notes then outstanding, except pursuant to a Change of Control (as defined in the Notes) with respect to which the Company is in compliance with Section 4 of the Notes. A Buyer may assign some or all of its rights hereunder without the consent of the Company, provided, however, that any such assignment shall not release such Buyer from its obligations hereunder unless such obligations are assumed by such assignee and the Company has consented to such assignment and assumption. Notwithstanding anything to the contrary contained in the Transaction Documents, the Buyers shall be entitled to pledge the Securities in connection with a bona fide margin account or other loan secured by such Securities.

h. No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

i. Survival. Unless this Agreement is terminated under Section 9(l), the representations and warranties of the Company and the Buyers contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5 and 9, and the indemnification provisions set forth in Section 8, shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

j. Publicity. The Company and each Buyer shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Buyer, to make any press release or other public disclosure with respect to such transactions as is required by applicable law and regulations (although each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release and shall be provided with a copy thereof).

k. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

l. Termination. In the event that the Closing shall not have occurred with respect to a Buyer on or before three (3) Business Days from the date hereof due to the Company's or the Buyer's failure to satisfy the conditions set forth in Sections 6 and 7 above (and the non-breaching party's failure to waive such unsatisfied condition(s)), the non-breaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party; provided, however, that if this Agreement is terminated pursuant to this Section 9(l), the Company shall remain obligated to reimburse a non-breaching Buyer for expenses up to the amount described in Section 4(j) above.

m. Placement Agent. The Company acknowledges that it has engaged BancBoston Robertson Stephens, Inc. as a placement agent in connection with the sale of the Notes and the Warrants, which placement agent may have formally or informally engaged other agents on its behalf. The Company shall be responsible for the payment of any placement agent's fees or brokers' commissions relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorneys' fees and out of pocket expenses) arising in connection with any such claim.

n. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

o. Remedies. Each Buyer and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

p. Payment Set Aside. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to the Registration Rights Agreement or the Warrants or such Buyer enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

* * * * *

IN WITNESS WHEREOF, the Buyers and the Company have caused this Securities Purchase Agreement to be duly executed as of the date first written above.

<u>Exhibit Number</u>	<u>Description</u>
4.1	Securities Purchase Agreement by and among Wingate Capital Ltd. and Fisher Capital Ltd. (collectively the "Buyers") and 8x8, Inc. dated December 15, 1999, with Schedule and Exhibits.
4.2	Registration Rights Agreement by and among 8x8, Inc. and the Buyers dated December 15, 1999.
4.3	Form of Series A Warrant by and among 8x8, Inc. and FleetBoston Robertson Stephens, Inc. dated December 16, 1999.
4.4	Form of Series B Warrant by and among 8x8, Inc. and FleetBoston Robertson Stephens Inc. dated December 16, 1999.
4.5	Registration Rights Agreement by and among 8x8, Inc. and FleetBoston
10.1	1999 Nonstatutory Stock Option Plan, as amended, and form of Stock Option Agreement.
27.1+	Financial Data Schedule.

SCHEDULE OF BUYERS

COMPANY:
8x8, INC.
By: _____
Name:
Title:

BUYER:
FISHER CAPITAL LTD.
By: _____
Name: Daniel J. Hopkins
Its: Authorized Signatory
WINGATE CAPITAL LTD.
By: _____
Name: Daniel J. Hopkins
Its: Authorized Signatory

SCHEDULES

Schedule of Buyers

EXHIBITS

Exhibit A - Form of Series A Note

EXHIBIT A

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN A FORM REASONABLY SATISFACTORY TO THE ISSUER, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO EITHER RULE 144A UNDER SAID ACT TO A QUALIFIED INSTITUTIONAL BUYER OR RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTION 2(d)(viii) HEREOF. THE PRINCIPAL AMOUNT AND THE INTEREST THEREON REPRESENTED BY THIS NOTE MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 2(d)(viii) OF THIS NOTE.

SERIES A CONVERTIBLE NOTE

_____, _____ \$ _____

FOR VALUE RECEIVED, 8X8, INC., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of _____ or registered assigns ("**Holder**") the principal amount of _____ Dollars (\$ _____), on the Maturity Date (as defined below) and to pay interest ("**Interest**") on the unpaid principal balance hereof at the rate of 4.0% per annum from the date hereof (the "**Issuance Date**") until the same becomes due and payable, whether at maturity or upon acceleration or by conversion or redemption in accordance with the terms hereof or otherwise. Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 365-day year and actual days elapsed and shall (A) be payable in cash or Common Stock at the option of the Company on the Interest Dates (as defined below) pursuant to Section 2(c)(ii) and (B) be included in the Additional Amount (as defined below) at the time of optional or mandatory conversion or redemption of the principal to which such interest relates in accordance with Section 1 hereof. Any amount of interest on this Note which is not paid when due shall bear interest at the rate of 18% per annum from the date thereof until the same is paid ("**Default Interest**").

1. Payments of Principal and Interest. All payments of principal and interest on this Note (to the extent such principal and/or interest is not converted into Common Stock in accordance with the terms hereof) shall be made in lawful money of the United States of America by wire transfer of immediately available funds to such account as the Holder may from time to time designate by written notice in accordance with the provisions of this Note. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day (as defined below), the same shall instead be due on the next succeeding day which is a Business Day and, in the case of any interest payment date which is not the date on which this Note is paid in full, the extension of the due date thereof shall not be taken into account for purposes of determining the amount of interest due on such date. For purposes of this Note, "**Business Day**" shall mean any day other than a Saturday, Sunday or a day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed. Each capitalized term used herein, and not otherwise defined, shall have the meaning ascribed thereto in the Securities Purchase Agreement, dated December 15, 1999, pursuant to which this Note and the Other Notes (as defined below) were originally issued (the "**Securities Purchase Agreement**"). This Note and the Other Notes issued by the Company pursuant to the Securities Purchase Agreement are collectively referred to in this Note as the "**Notes**."

2. Conversion of Notes. This Note shall be convertible into shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 2.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) "**Additional Amount**" means, with respect to any principal amount of Notes, the sum of (A) accrued and unpaid Interest, if any, on such principal amount and (B) Default Interest, if any, on the interest referred to in the immediately preceding clause (A).

(ii) **"Change of Control"** means any of the following: (A) the consolidation, merger or other business combination of the Company with or into another Person (other than (I) a consolidation, merger or other business combination in which holders of the Company's voting power immediately prior to the transaction continue after the transaction to hold, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (II) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), (B) the sale or transfer of all or substantially all of the Company's assets, or (C) a purchase, tender or exchange offer made to and accepted by the holders of more than the 50% of the outstanding shares of Common Stock.

(iii) **"Closing Bid Price"** means, for any security as of any date, the last closing bid price for such security on the Principal Market (as defined below) as reported by Bloomberg Financial Markets ("**Bloomberg**"), or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price is reported for such security by Bloomberg, the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Bid Price cannot be calculated for such security on such date on any of the foregoing bases, the Closing Bid Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holders of the Notes. If the Company and the Holders of the Notes are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 2(e)(iii) below with the term "Closing Bid Price" being substituted for the term "Market Price." All such determinations to be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

(iv) **"Conversion Amount"** means the sum of (A) the principal amount of this Note to be converted, redeemed or otherwise with respect to which this determination is being made and (B) the Additional Amount with respect to such principal amount.

(v) **"Conversion Price"** means, as of any Conversion Date (as defined in Section 2(d)(i)) or other date of determination, the product of (A) 117.5% and (B) the Market Price (as defined below) of the Common Stock on the date which is 36 trading days after the Issuance Date, subject to adjustment as provided herein, provided that the Conversion Price shall not exceed \$7.05 (subject to adjustment for stock dividends, stock splits, stock combinations or other similar transactions) nor be less than \$4.00 (subject to adjustment for stock dividends, stock splits, stock combinations or other similar transactions) except pursuant to adjustments pursuant to Section 2(f), Section 2(d)(v)(B), Section 2(d)(vii), Section 3(e) or Section 4.

(vi) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable for Common Stock.

(vii) **"Issuance Date"** means, with respect to each Note, the date of issuance of the applicable Note.

(viii) **"Maturity Date"** means the date which is three (3) years after the Issuance Date of this Note.

(ix) **"Market Price"** means, with respect to any security, that price which shall be computed as the arithmetic average of the Closing Bid Prices for such security during the five (5) consecutive trading days immediately preceding such date of determination. All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

(x) **"Options"** means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(xi) "**Other Notes**" means the convertible notes (whether Series A or Series B), other than this Note, issued by the Company pursuant to the Securities Purchase Agreement.

(xii) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(xiii) "**Principal Market**" means the Nasdaq National Market.

(xiv) "**Registration Rights Agreement**" means that certain registration rights agreement between the Company and the initial holders of the Notes relating to the filing of a registration statement covering the resale of the shares of Common Stock issuable upon conversion of the Notes and exercise of the Warrants.

(xv) "**Restricted Securities**" means securities that are not eligible for resale pursuant to Rule 144(k) under the 1933 Act (or any successor provision).

(b) Holder's Conversion Right; Mandatory

Redemption. Subject to the provisions of Section 5, at any time or times on or after the Issuance Date (as defined below), the Holder shall be entitled to convert any part of the outstanding and unpaid Conversion Amount of this Note into fully paid and nonassessable shares of Common Stock in accordance with Section 5, at the Conversion Rate (as defined below). If any Conversion Amount of this Note remains outstanding on the Maturity Date, then, pursuant to Section 2(d)(vii), all of such Conversion Amount shall be redeemed by the Company. The Company shall not issue any fraction of a share of Common Stock upon any conversion. All shares of Common Stock (including fractions thereof) issuable upon conversion of this Note by the Holder shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a share of Common Stock. If, after the aforementioned aggregation, the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up or down to the nearest whole share.

(c) Conversion.

(i) Conversion Rate. The number of shares of Common Stock issuable upon conversion of a Conversion Amount of this Note pursuant to Section 2(b) shall be determined according to the following formula (the "**Conversion Rate**"):

Conversion Amount

Conversion Price

(ii) Cash Payment of Additional Amount. The Additional Amount shall be payable on the last day of each March and the last day of each September during the period beginning on the Issuance Date and ending on, and including, the Maturity Date (each an "**Interest Date**"). If an Interest Date is not a Business Day then the Additional Amount shall be due and payable on the Business Day immediately following the Interest Date. The Additional Amount shall be payable in cash or, at the Company's option, in shares of Common Stock ("**Interest Shares**") provided that the Additional Amount which accrued during any period shall be payable in Conversion Shares only if the Company provides written notice ("**Interest Election Notice**") to each Holder of the Notes at least six (6) trading days prior to the Interest Date. Interest (as defined in the first paragraph of this Note) to be paid in shares of Common Stock shall be paid in a number of fully paid and nonassessable shares (rounded to the nearest whole share in accordance with Section 2(b)) of Common Stock equal to the quotient of (I) the Additional Amount and (II) the Market Price of the Common Stock on the applicable Interest Date. Notwithstanding the foregoing, the Company shall not be entitled to pay the Additional Amount in shares of Common Stock and shall be required to pay the Additional Amount in cash if (x) any event constituting a Triggering Event (as defined in Section 3(b)), or an event that with the passage of time would constitute a Triggering Event if not cured, has occurred and is continuing on the date of the Company's Interest Election Notice or on the Interest Date, unless otherwise consented to in writing by the holders of the Notes representing a majority of the Conversion Amounts of the Notes entitled to receive such Interest or (y) the Registration Statement (as defined in the Registration Rights Agreement) is not effective and available for the resale of all of the Registrable Securities (as defined in the Registration Rights Agreement), including but not limited to the Interest Shares, on the Date of the Company's Interest Election Notice or on the Interest Date. Any accrued and unpaid Interest which is not paid within five (5) Business Days of such accrued and unpaid Interest's Interest Date shall bear interest at the rate of 18.0% per annum from such Interest Date until the same is paid in full (the "**Default Interest**").

(d) Mechanics of Conversion. The conversion of this Note shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert this Note into shares of Common Stock on any date (the "**Conversion Date**"), the Holder hereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 6:00 p.m., Central Time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company with a copy thereof to the Company's designated transfer agent (the "**Transfer Agent**") and (B) if required by Section 2(d)(viii), surrender to a common carrier for delivery to the Company as soon as practicable following such date the original Note being converted (or an indemnification undertaking with respect to such Note in the case of its loss, theft or destruction). A holder delivering a Conversion Notice by facsimile shall use its best efforts to send a copy of the Conversion Notice by overnight mail to the Company by depositing such copy of the Conversion Notice with a nationally recognized overnight delivery service on the Conversion Date; provided, however, that the failure of any holder to satisfy its obligations under this sentence shall not effect the Conversion Date or the obligations of the Company for any conversion of this Note. The date of the Company's receipt of such copy of the Conversion Notice shall be deemed to occur on the Business Day immediately following the day such holder deposits the copy of the Conversion Notice with a nationally recognized overnight delivery service (the "**Overnight Receipt Date**").

(ii) Company's Response. Upon receipt by the Company of a facsimile or other copy of a Conversion Notice, the Company (1) shall immediately send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (2) on or before the second Business Day following the date of receipt by the Company of such Conversion Notice (the "**Share Delivery Date**"), (A) issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled, or (B) provided the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, upon the request of the holder, credit such aggregate number of shares of Common Stock to which the holder shall be entitled to the holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system. Subject to Section 2(d)(viii), if less than the Conversion Amount of this Note is submitted for conversion, then the Company shall, as soon as practicable and in no event later than five Business Days after receipt of the Note (the "**Note Delivery Date**") and at its own

expense, issue and deliver to the Holder a new Note for the outstanding principal amount not converted.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Market Price or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the holder the number of shares of Common Stock that is not disputed and shall submit the disputed determinations or arithmetic calculations to the holder via facsimile within one (1) Business Day of receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the determination of the Market Price or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall within one (1) Business Day submit via facsimile (A) the disputed determination of the Market Price to an independent, reputable investment bank selected by the Company and approved by the Holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(iv) Record Holder. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If within four (4) Business Days after the Overnight Receipt Date the Company shall fail to issue a certificate to the Holder or credit the Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of this Note or, subject to Section 2(d)(viii), the Company shall fail to issue a new Note representing the principal amount to which such holder is entitled, if any, pursuant to Section 2(d)(ii), in addition to all other available remedies which such Holder may pursue hereunder and under the Securities Purchase Agreement (including indemnification pursuant to Section 8 thereof), the Company shall pay additional damages to such Holder for each date after the Share Delivery Date such conversion is not timely effected and/or each date after the Note Delivery Date such new Note is not delivered in an amount equal to 0.5% of the product of (I) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which such Holder is entitled and, in the event the Company has failed to deliver a new Note to the Holder on or prior to the Note Delivery Date, the number of shares of Common Stock issuable upon conversion of the Conversion Amount represented by the new Note, as of the Note Delivery Date and (II) the Closing Bid Price of the Common Stock on the Share Delivery Date, in the case of the failure to deliver Common Stock, or the Note Delivery Date, in the case of failure to deliver a new Note. If the Company fails to pay the additional damages set forth in this Section 2(d)(v) within five Business Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of shares of Common Stock equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price in effect on such Conversion Date as specified by the holder in the Conversion Notice.

(B) Void Conversion Notice; Adjustment to Conversion Price. If for any reason the Holder has not received all of the shares of Common Stock prior to the ninth (9th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note, then the Holder, upon written notice to the Company, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any principal amount of this Note that has not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 2(d)(v)(A) or otherwise. If for any reason the Holder has not received all of the shares of Common Stock prior to the fourteenth (14th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note, then the Conversion Price of the principal amount of this Note with respect to which the Company has not delivered shares of Common Stock on or prior to such fourteenth (14th) Business Day shall be adjusted to the lesser of (I) the Conversion Price as in effect on the date on which the holder voided the Conversion Notice and (II) the lowest Closing Bid Price during the period beginning on the Conversion

Date and ending on the date such holder voided the Conversion Notice, subject to further adjustment as provided in this Note.

(C) Redemption. If for any reason the Holder has not received all of the shares of Common Stock prior to the ninth (9th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note (a "**Conversion Failure**"), then the Holder, upon written notice to the Company, may require that the Company redeem any or all of the Conversion Amount of this Note, including the Conversion Amount previously submitted for conversion and with respect to which the Company has not delivered shares of Common Stock, in accordance with Section 3.

(vi) Pro Rata Conversion and Redemption. In the event the Company receives a Conversion Notice from more than one holder of the Notes for the same Conversion Date and the Company can convert some, but not all, of the Notes submitted for conversion, the Company shall convert from each holder electing to have Notes converted at such time a pro rata amount of such holder's Conversion Amount submitted for conversion based on the Conversion Amount of the Notes submitted for conversion on such date by such holder relative to the Conversion Amount of all Notes submitted for conversion on such date.

(vii) Mandatory Redemption at Maturity. If any Conversion Amount of this Note remains outstanding on the Maturity Date, then all of the Conversion Amount shall be redeemed as of such date (a "**Maturity Date Mandatory Redemption**") for an amount in cash equal to the Conversion Amount on the Maturity Date (the "**Maturity Date Redemption Price**"). On the Maturity Date the Company shall pay to each Holder outstanding on the Maturity Date, by wire transfer of immediately available funds, an amount equal to the Maturity Date Redemption Price. If the Company shall fail to redeem all of the Conversion Amount of this Note outstanding on or prior to the date which is three (3) Business Days after the Maturity Date by payment of the Maturity Date Redemption Price, then in addition to any remedy the Holder may have under this Note, the Securities Purchase Agreement and the Registration Rights Agreement, the Holder shall have the option to require the Company to convert any or all of the Conversion Amount that the Company should have redeemed under this Section 2(d)(vii) and for which the Maturity Date Redemption Price (together with any interest thereon) has not been paid into the number of shares of Common Stock which the Company would have been required to issue if the Holder had given a Conversion Notice for such Conversion Amount (together with any interest thereon) on the Maturity Date at a Conversion Price equal to the lesser of (A) the Conversion Price in effect on the Maturity Date and (B) 95% of the Market Price of the Common Stock on the Maturity Date.

(viii) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the holder thereof shall not be required to physically surrender this Note to the Company unless the full Conversion Amount represented by this Note is being converted. The Holder and the Company shall maintain records showing the Conversion Amount so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon each such conversion. In the event of any dispute or discrepancy, such records of the Company shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if this Note is converted as aforesaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder may request, representing in the aggregate the remaining Conversion Amount represented by this Note. The Holder and any assignee, by acceptance of this Note or a new Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any portion of this Note, the Conversion Amount (including the principal of this Note) represented by this Note may be less than the principal amount and the accrued interest set forth on the face hereof.

(e) Taxes. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of Common Stock upon the conversion of Notes.

(f) Adjustments to Conversion Price -- Dilution and Other Events. In addition to any other adjustments provided herein, the Conversion Price will be subject to adjustment from time to time as provided in this Section 2(f).

(i) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the date of issuance of the Notes, the Company issues or sells, or in accordance with this Section 2(f) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with an Approved Stock Plan (as defined below) or Excluded Securities (as defined below) or upon conversion of the Notes or exercise of the Warrants (as defined in the Securities Purchase Agreement)) for a consideration per share less than a price (the "**Applicable Price**") equal to the Market Price on the date of such issue or sale, then immediately after such issue or sale, the Conversion Price then in effect shall be reduced to an amount equal to the product of (x) the Conversion Price in effect immediately prior to such issue or sale and (y) the quotient of (I) the sum of (I) the product of the Applicable Price and the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale and (II) the consideration, if any, received by the Company upon such issue or sale, divided by (2) the product of (I) the Applicable Price multiplied by (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of determining the adjusted Conversion Price under this Section 2(f)(i), the following shall be applicable:

(A) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 2(f)(i)(A), the "lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Option" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 2(f)(i)(A) to the extent that such adjustment is based solely on the fact that the Convertible Securities issuable upon exercise of such Option are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

(B) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(f)(i)(B), the "price per share for which one share of Common Stock is issuable upon such conversion or exchange" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price had been or are to be made pursuant to other provisions of this Section 2(f)(i), no further adjustment of the Conversion Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 2(f)(i)(B) to the extent that such adjustment is based solely on the fact that such Convertible Securities are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

(C) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(f)(i)(C), if the terms of any Option or Convertible Security that was outstanding as of the

date of issuance of this Note are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(D) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the Market Price of such securities on the date of receipt. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of the Notes representing a majority of the Conversion Amount of the Notes then outstanding. If such parties are unable to reach agreement within 10 days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five business days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding. The determination of such appraiser shall be deemed binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(E) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (2) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(F) Certain Definitions. For purposes of this Section 2(f)(i), the following terms have the respective meanings set forth below:

(I) "**Approved Stock Plan**" shall mean any employee benefit plan which has been approved by the Board of Directors of the Company, pursuant to which the Company's securities may be issued to any employee, officer or director for services provided to the Company.

(II) "**Common Stock Deemed Outstanding**" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 2(f)(i)(A) and 2(f)(i)(B) hereof regardless of whether the Options or Convertible Securities are actually exercisable at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable upon conversion of the Notes or the exercise of the Warrants.

(III) "**Excluded Securities**" means any of the following (a) any issuance by the Company of securities in connection with a strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (b) shares of Common Stock issued by the Company in a firm commitment, underwritten public offering, (c) any issuance by the Company of securities as consideration for a merger or consolidation or the acquisition of a business, product, license or other assets of another person or entity and (d) any issuance by the Company of securities as consideration to a service provider, which is not an officer or director of the Company, for services provided to the Company on commercially reasonable terms and which in the aggregate is less than \$1,000,000.

(ii) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Company at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(iii) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2(f) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of the Notes; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 2(f).

(iv) Notices.

(A) Immediately upon any adjustment of the Conversion Price, the Company will give written notice thereof to each holder of the Notes setting forth in reasonable detail, and certifying, the calculation of such adjustment.

(B) The Company will give written notice to each holder of the Notes at least twenty (20) days prior to the date on which the Company closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Organic Change (as defined in Section 4(a)), dissolution or liquidation, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to each such holder.

(C) The Company will also give written notice to each holder of the Notes at least twenty (20) days prior to the date on which any Organic Change, dissolution or liquidation will take place, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to each such holder.

3. Redemption at Option of Holder.

(a) Redemption Option Upon Triggering Event.

In addition to all other rights of the Holder contained herein, after a Triggering Event (as defined below), the Holder shall have the right, at the Holder's option, to require the Company to redeem all or a portion of this Note at a price equal to (x) with respect to a Triggering Event described in clauses (iii) or (vii) of Section 3(b) below, 110% of the Conversion Amount, and (y)

with respect to a Triggering Event described in clauses (i), (ii), (iv), (v) or (vi) of Section 3(b) below, the greater of (i) 110% of the Conversion Amount and (ii) the product of (A) the Conversion Rate for the Conversion Amount to be redeemed in effect at such time as such holder delivers a Notice of Redemption at Option of Buyer (as defined below) and (B) the Closing Bid Price in effect on the date such holder delivers a Notice of Redemption at Option of Buyer or, if such day is not a trading day, the immediately preceding trading day on which the Principal Market, or the market or exchange where the Common Stock is then traded, is open for trading ("**Redemption Price**").

(b) "**Triggering Event**". A "**Triggering Event**" shall be deemed to have occurred at such time as any of the following events:

(i) the failure of the Registration Statement to be declared effective by the SEC on or prior to the Effectiveness Deadline (as defined in the Registration Rights Agreement);

(ii) while the Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of the Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to the Holder for sale of all of such Holder's Registrable Securities (as defined in the Registration Rights Agreement) in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of five consecutive trading days or any 10 trading days in a 365-day period (excluding days during an Allowable Grace Period);

(iii) the suspension from trading or failure of the Common Stock to be listed on the Nasdaq National Market or The New York Stock Exchange, Inc. or The American Stock Exchange, Inc. for a period of five consecutive trading days or for more than an aggregate of 10 trading days in any 365-day period;

(iv) the Company's or the Transfer Agent's notice to any holder of Notes, including by way of public announcement, at any time, of its intention not to comply with a request for conversion of any Notes into shares of Common Stock that is tendered in accordance with the provisions of the Notes;

(v) a Conversion Failure (as defined in Section 2(d)(v)(C));

(vi) upon the Company's receipt of a Conversion Notice, the Company shall not be obligated to issue the shares of Common Stock issuable upon such conversion of Notes due to the provisions of Section 11; or

(vii) the Company breaches any representation, warranty, covenant or other term or condition of the Securities Purchase Agreement, the Registration Rights Agreement, the Warrants, this Note or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated thereby and hereby, except to the extent that such breach would not have a Material Adverse Effect (as defined in Section 3(a) of the Securities Purchase Agreement) and except, in the case of a breach of a covenant which is curable, only if such breach continues for a period of at least 10 days.

(c) Mechanics of Redemption at Option of Buyer.

Within one (1) Business Day after the occurrence of a Triggering Event described in clauses (i), (ii), (iii), (iv), (v) or (vi) of Section 3(b), or within one (1) Business Day of the Company becoming aware of a Triggering Event described in clause (vii) of Section 3(b), as the case may be, the Company shall deliver

written notice thereof via facsimile and overnight courier ("**Notice of Triggering Event**") to each holder of the Notes. At any time after the earlier of the Holder's receipt of a Notice of Triggering Event and the Holder becoming aware of a Triggering Event, the Holder may require the Company to redeem all of such Holder's Notes by delivering written notice thereof via facsimile and overnight courier ("**Notice of Redemption at Option of Buyer**") to the Company, which Notice of Redemption at Option of Buyer shall indicate (i) the Conversion Amount of the Notes that the Holder is electing to redeem and (ii) the applicable Redemption Price, as calculated pursuant to Section 3(a) above.

(d) Payment of Redemption Price. Upon the Company's receipt of a Notice(s) of Redemption at Option of Buyer from any holder of Notes, the Company shall immediately notify each holder of Notes by facsimile of the Company's receipt of such notices. The Company shall deliver the applicable Redemption Price to the Holder within 10 Business Days after the Company's receipt of a Notice of Redemption at Option of Buyer; provided that the Holder's Notes shall have been delivered to the Company. If more than one holder of Notes submits Notes for redemption and the Company is unable to redeem all of the Notes submitted for redemption, the Company shall redeem a pro rata amount from each holder of Notes based on the Conversion Amount represented by the Notes submitted for redemption by such holder relative to the aggregate Conversion Amounts of all Notes for redemption by all holders of Notes.

(e) Void Redemption. In the event that the Company does not pay the Redemption Price within the time period set forth in Section 3(d), at any time thereafter and until the Company pays such unpaid applicable Redemption Price in full, the Holder shall have the option (the "**Void Optional Redemption Option**") to, in lieu of redemption, require the Company to promptly return to the Holder the Note that was submitted for redemption by such Holder under this Section 3 and for which the applicable Redemption Price (together with any interest thereon) has not been paid, by sending written notice thereof to the Company via facsimile (the "**Void Optional Redemption Notice**"). Upon the Company's receipt of such Void Optional Redemption Notice, (i) the Notice of Redemption at Option of Buyer shall be null and void with respect to that portion of the Note subject to the Void Optional Redemption Notice, (ii) the Company shall immediately return the Note subject to the Void Optional Redemption Notice, and (iii) the Conversion Price of such portion of the Note shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Optional Redemption Notice is delivered to the Company and (B) the lowest Closing Bid Price during the period beginning on the date on which the Notice of Redemption at Option of Buyer is delivered to the Company and ending on the date on which the Void Optional Redemption Notice is delivered to the Company.

(f) Disputes; Miscellaneous. In the event of a dispute as to the determination of the Closing Bid Price or the arithmetic calculation of the Redemption Price, such dispute shall be resolved pursuant to Section 2(d)(iii) above with the term "Closing Bid Price" being substituted for the term "Market Price" and the term "Redemption Price" being substituted for the term "Conversion Rate". The Holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice. In the event of a redemption pursuant to this Section 3 of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note representing the remaining Conversion Amount which has not been redeemed.

4. Other Rights of Holders.

(a) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to another Person or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "**Organic Change.**" Prior to the consummation of any (i) sale of all or substantially all of the Company's assets to an acquiring Person or (ii) other Organic Change following which the Company is not a surviving entity, the Company will secure from the Person purchasing such assets or the successor resulting from such Organic Change (in each case, the "**Acquiring Entity**") a written agreement (in form and substance reasonably satisfactory to the holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding) that the Acquiring Entity will assume the obligations represented by this Note (including, without limitation, the right to convert this Note into the securities or assets issued to the holders of the Common Stock in connection with such Organic Change).

(b) Optional Redemption Upon Corporate Event.

In addition to the rights of the Holder under Section 4(a), upon a Corporate Event (as defined below) of the Company the Holder shall have the right, at the Holder's option, to require the Company to redeem all or a portion of the Conversion Amount represented by this Note equal to 110% of the Conversion Amount ("**Corporate Event Redemption Price**"). No sooner than 15 days nor later than 10 days prior to the consummation of a Corporate Event, but not prior to the public announcement of such Corporate Event, the Company shall deliver written notice thereof via facsimile and overnight courier (a "**Notice of Corporate Event**") to the Holder. At any time during the period beginning after receipt of a Notice of Corporate Event (or, in the event a Notice of Corporate Event is not delivered at least 10 days prior to a Corporate Event, at any time on or after the date which is 10 days prior to a Corporate Event) and ending on the date of such Corporate Event, the Holder may require the Company to redeem all or a portion of the Conversion Amount of this Note then outstanding by delivering written notice thereof via facsimile and overnight courier (a "**Notice of Redemption Upon Corporate Event**") to the Company, which Notice of Redemption Upon Corporate Event shall indicate (i) the Conversion Amount the Holder is submitting for redemption, and (ii) the applicable Corporate Event Redemption Price, as calculated pursuant to Section 4(b). Upon the Company's receipt of a Notice(s) of Redemption Upon Corporate Event from any holder of Notes, the Company shall promptly, but in no event later than one (1) Business Day following such receipt, notify the Holder of this Note by facsimile of the Company's receipt of such Notice(s) of Redemption Upon Corporate Event. The Company shall deliver the applicable Corporate Event Redemption Price simultaneous with the consummation of the Corporate Event; provided that, if required by Section 2(d)(viii), this Note shall have been so delivered to the Company. Payments provided for in this Section 4(b) shall have priority to payments to the Company's stockholders in connection with a Corporate Event. For purposes of this Section 4(b), "**Corporate Event**" means any of the following in which the consideration to be paid per share is less than the Conversion Price: (i) the consolidation, merger or other business combination of the Company with or into another Person (other than (A) a consolidation, merger or other business combination in which holders of the Company's voting power immediately prior to the transaction continue after the transaction to hold, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), (ii) the sale or transfer of all or substantially all of the Company's assets, or (iii) a purchase, tender or exchange offer made to and accepted by the holders of more than the 50% of the outstanding shares of Common Stock.

(c) Purchase Rights. If at any time the

Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) Right to Exchange Note. At any time prior to

the Maturity Date and so long as any principal amount is still outstanding under this Note, if the Company issues or agrees to issue any equity securities or any instrument convertible into or exercisable or exchangeable for equity securities of the Company ("**New Equity Securities**"), then within one Business Day after the issuance of such New Equity Securities, the Company shall make an irrevocable exchange offer to the Holder on such terms and conditions as the Holder shall reasonably require to either exchange any or all of the Conversion Amount of this Note for a like amount in value of the New Equity Securities or replace the Conversion Price then in effect with the issuance price or conversion price as determined over time pursuant to those documents which dictate the terms of the New Equity Security. Each such exchange offer shall remain open for at least 15 Business Days or until such time as the Holder accepts or rejects, in writing, such exchange offer. In the event the Holder elects to replace the existing Conversion Price, then from and after the date of the Company's receipt of the Holder's written acceptance pursuant to this Section 4(d), the Conversion Price will automatically be replaced with the issuance price or conversion price formula of the New Equity Security. If the consummation or terms of the New Equity Security constitutes material non-public information, then the Company shall disclose the terms of such New Equity Security on a Form 8-K within one Business Day after the initial issuance of such New Equity Security. The Company's obligation to provide the "New Financing Notice" and offer to exchange the existing Note or replace the existing Conversion Price shall not apply to (i) the Company's issuance of securities (A) as consideration of a merger or consolidation or (B) in connection with any strategic partnership or joint venture with any entity whose primary business is

not investing in or advising other entities, (ii) the issuance of Common Stock in a firm commitment, underwritten public offering, (iii) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the Issuance Date provided the terms of such securities are not amended after the Issuance Date, and (iv) the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option plan, restricted stock plan or stock purchase plan for the benefit of the Company's employees, officers or directors for services provided to the Company.

5. **Limitations on Beneficial Ownership.** The

Company shall not be obligated to effect any conversion of this Note and no Holder shall have the right to convert any Conversion Amount pursuant to Section 2(b) to the extent that after giving effect to such conversion such Person (together with such Person's affiliates) would have acquired, through conversion of the Notes or otherwise, in excess of 10.00% of the outstanding shares of the Common Stock following such conversion during the 60-day period ending on and including the date of such conversion. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by a Person and its affiliates or acquired by a Person and its affiliates, as the case may be, shall include the number of shares of Common Stock issuable upon conversion of the Conversion Amount of such Notes with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted Conversion Amount of such Notes beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, the Warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Person and its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 5(a), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 5, in determining the number of outstanding shares of Common Stock a holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within two (2) Business Days confirm orally and in writing to the Holder the number of shares Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion of the Conversion Amount of such Notes and exercising the Warrants by the Person and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

6. **Redemption at the Company's Election.** At

any time or times during the period beginning on the first anniversary of the Issuance Date and ending on and including the Maturity Date, the Company shall have the right, in its sole discretion, to require that some or all of the outstanding Conversion Amount of the outstanding Notes issued on such Issuance Date be redeemed ("**Redemption at Company's Election**") for consideration equal to (i) in the event that the Company's Election Redemption Date (as defined below) is prior to the date which is the second anniversary of the Issuance Date, 175% of the Conversion Amount of such Notes to be redeemed on the Company Election Redemption Date or (ii) in the event that the Company's Election Redemption Date is on or after the date which is the second anniversary of the Issuance Date, 150% of the Conversion Amount of such Notes to be redeemed on the Company Election Redemption Date (the "**Company's Election Redemption Price**"); provided that the Conditions to Redemption at the Company's Election (as set forth below) are satisfied. The Company shall exercise its right to Redemption at Company's Election by providing each holder of Notes written notice ("**Notice of Redemption at Company's Election**") at least 20 Business Days but not more than 30 Business Days prior to the date of consummation of such redemption ("**Company's Election Redemption Date**"). If the Company elects to require redemption of some, but not all, of the Conversion Amount of the Notes then outstanding, the Company shall require redemption of the pro rata amount from each holder of such Notes based on the principal amount of Notes purchased by such holder relative to the aggregate principal amount of all Notes purchased pursuant to the Securities Purchase Agreement (such amount with respect to the Holder being referred to herein as its "**Pro Rata Redemption Amount**"). The Notice of Redemption at Company's Election shall indicate (x) the Conversion Amount of the Notes the Company has elected to redeem from all holder of Notes, (y) the Company's Election Redemption Date, and (z) each holder's Pro Rata Redemption Amount. If the Company has exercised its right of Redemption at Company's Election and the conditions of this Section 6, including the Conditions to Redemption at Company's Election, have been satisfied, then each holder's Pro Rata Redemption Amount shall be redeemed as of the Company's Election Redemption Date by payment by the Company to each holder of the Notes of the Company's Election Redemption Price. If required by Section 2(d)(viii), all holders of the Notes shall thereupon and within two Business Days after the Company's Election Redemption Date or such earlier date as the Company and each holder of Notes mutually agree, surrender all Notes being redeemed on such date to the Company. If the Company fails to pay the full Company's Election Redemption Price with respect to this Note then the Redemption at Company's Election shall be null and void with respect to this Note and the Holder shall be entitled to all the rights of a holder of outstanding Notes. "**Conditions to Redemption at the Company's Election**" means the following conditions: (i) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, the Company shall have delivered Conversion Shares upon conversion of the Notes to the holders of the Notes on a timely basis as set forth in Section 2(d)(ii) of this Note; (ii) on each day during the period beginning 30 days prior to the date of Notice of Redemption at Company's Election and ending on and including the Company's Election Redemption Date the Registration Statement shall be effective and available for the sale of at least

all of the Registrable Securities (as defined in the Registration Rights Agreement); (iii) on each day during the period beginning 30 days prior to the date of Notice of Redemption at Company's Election and ending on and including the Company's Election Redemption Date, the Common Stock is designated for quotation on the Nasdaq National Market or listed on The New York Stock Exchange, Inc., is not suspended from trading and neither delisting nor suspension by such exchanges shall have been threatened either (A) in writing by such exchanges or (B) by falling below the minimum listing maintenance requirements of such exchanges; (iv) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, there shall not have occurred a Triggering Event or an event that with the passage of time and without being cured would constitute a Triggering Event; (v) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, there shall not have occurred the consummation of a Change of Control or the public announcement of a pending Change of Control which has not been terminated; and (vi) the Company otherwise has satisfied its obligations in all material respects and is not in default in any material respect under this Note, the Securities Purchase Agreement, the Warrants and the Registration Rights Agreement. Notwithstanding the above, but subject to Section 5, the Holder may convert any Conversion Amount (including Conversion Amounts selected for redemption) into Common Stock pursuant to Section 2(b) on or prior to the date immediately preceding the Company's Election Redemption Date. If the Company fails to timely pay any Company's Election Redemption Price in accordance with this Section 6, then the Company shall not be permitted to submit another Notice of Redemption at Company's Election without the prior written consent of the holders of the Notes representing at least two-thirds (2/3) of the Conversion Amounts of the Notes then outstanding.

7. Reservation of Shares. The Company shall, so long as any principal amount of the Note is outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Notes, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Conversion Amounts of the Notes then outstanding; provided that the number of shares of Common Stock so reserved shall at no time be less than 115% of the number of shares of Common Stock for which the Conversion Amounts of the Notes are at any time convertible. The initial number of shares of Common Stock reserved for conversions of the Notes and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Notes based on the principal amount of the Notes held by each holder at the time of issuance of the Notes or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's Notes, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the remaining holders of the Notes, pro rata based on the principal amount of the Notes then held by such holders.

8. Voting Rights; Rank. Holders of the Notes shall have no voting rights, except as required by law, including but not limited to the General Corporation Law of the State of Delaware, and as expressly provided in this Note. Payments of principal and interest and other payments due under this Note, except as otherwise provided herein, shall rank pari passu with and shall not be subordinated to any other unsecured debt obligations of the Company.

9. Restriction on Redemption and Dividends. Until all of the Conversion Amount of this Note has been converted, redeemed or otherwise satisfied as provided herein, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, its capital stock without the prior express written consent of the holders of Notes representing a majority of the Conversion Amounts of the Notes then outstanding, except for payments on convertible securities of the Company outstanding on the Issuance Date pursuant to the terms of such convertible securities as in effect on the Issuance Date.

10. Participation. The holders of the Notes shall be entitled to such dividends paid and distributions made to the holders of Common Stock to the same extent as if such holders of Notes had converted the Notes into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

11. Limitation on Number of Conversion Shares. The Company shall not be obligated to issue any shares of Common Stock upon conversion of this Note if the issuance of such shares of Common Stock would exceed that number of shares of Common Stock which the Company may issue upon conversion of the Notes (the "**Exchange Cap**") without breaching the Company's obligations under the rules or regulations of the Principal Market, or

the market or exchange where the Common Stock is then traded, except that such limitation shall not apply in the event that the Company (a) obtains the approval of its stockholders as required by the applicable rules of the Principal Market, or the market or exchange where the Common Stock is then traded, (or any successor rule or regulation) for issuances of Common Stock in excess of such amount or (b) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the holders of a majority of the Conversion Amount of the Notes then outstanding. Until such approval or written opinion is obtained, no purchaser of Notes pursuant to the Securities Purchase Agreement (the "**Purchasers**") shall be issued, upon conversion of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap amount multiplied by (ii) a fraction, the numerator of which is the principal amount of the Notes issued to such Purchaser pursuant to the Securities Purchase Agreement and the denominator of which is the aggregate principal amount of all Notes issued to the Purchasers pursuant to the Securities Purchase Agreement (the "**Cap Allocation Amount**"). In the event that any Purchaser shall sell or otherwise transfer any of such Purchaser's Notes, the transferee shall be allocated a pro rata portion of such Purchaser's Cap Allocation Amount. In the event that any holder of Notes, shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Cap Allocation Amount, then the difference between such holder's Cap Allocation Amount and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Cap Allocation Amounts of the remaining Holders of Notes on a pro rata basis in proportion to Conversion Amount of Notes then held by each such Holder.

12. Reissuance of Notes. Subject to Section 2(d)(viii) in the event of a conversion or redemption pursuant to this Note of less than all of the Conversion Amount represented by this Note, the Company shall promptly cause to be issued and delivered to the Holder, upon tender by the Holder of this Note converted or redeemed, a new note of like tenor representing the remaining principal amount of this Note which has not been so converted or redeemed.

13. Defaults and Remedies.

(a) Events of Default. An "**Event of Default**" is: (i) default for thirty (30) days in payment of interest or Default Interest on this Note on or after the Maturity Date; (ii) default in payment of the principal amount of this Note when and as due; (iii) failure by the Company for thirty (30) days after notice to it to comply with any other material provision of this Note; (iv) any default under or acceleration prior to maturity of any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed of at least \$500,000 by the Company or for money borrowed the repayment of at least \$500,000 of which is guaranteed by the Company, whether such indebtedness or guarantee now exists or shall be created hereafter; (v) if the Company pursuant to or within the meaning of any Bankruptcy Law; (A) commences a voluntary case; (B) consents to the entry of an order for relief against it in an involuntary case; (C) consents to the appointment of a Custodian of it or for all or substantially all of its property; (D) makes a general assignment for the benefit of its creditors; or (E) admits in writing that it is generally unable to pay its debts as the same become due; or (vi) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (1) is for relief against the Company in an involuntary case; (2) appoints a Custodian of the Company or for all or substantially all of its property; or (3) orders the liquidation of the Company or any subsidiary, and the order or decree remains unstayed and in effect for ninety (90) days. The Term "**Bankruptcy Law**" means Title 11, U.S. Code, or any similar Federal or State Law for the relief of debtors. The term "**Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

(b) Remedies. If an Event of Default occurs and is continuing, the Holder of this Note may declare all of this Note, including any interest and Default Interest and other amounts due, to be due and payable immediately, except that in the case of an Event of Default arising from events described in clauses (iv) and (v) of Section 13(a), this Note shall become due and payable without further action or notice. Holder may not enforce the provisions of this Section 13 except as provided in this Section 13. In addition to any remedy such holder of the Notes may have under this Note and the Securities Purchase Agreement, such unpaid amount shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full

14. Vote to Change the Terms of the Notes. The Notes and any provision hereof or thereof may only be amended by an instrument in writing signed by the Company and holders of a majority of the aggregate

Conversion Amount of the Notes then outstanding. The term "Note" and all reference thereto, as used throughout this instrument, shall mean this instrument (and the other Notes issued pursuant to the Securities Purchase Agreement) as originally executed, or if later amended or supplemented, then as so amended or supplemented.

15. Rule 144A Information Requirement. Within the period prior to the expiration of the holding period applicable to sales hereof under Rule 144(k) under the 1933 Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to the Holder and the holder of any Common Stock issued upon exercise of this Note which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of this Note from the Holder, the information required pursuant to Rule 144A(d)(4) under the 1933 Act upon the request of the Holder and it will take such further action as the Holder may reasonably request, all to the extent required from time to time to enable the Holder to sell this Note without registration under the 1933 Act within the limitation of the exemption provided by Rule 144A, as Rule 144A may be amended from time to time. Upon the request of the Holder, the Company will deliver to the Holder a written statement as to whether it has complied with such requirements.

16. Lost or Stolen Notes. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of an indemnification undertaking by the Holder to the Company in a customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver new notes of like tenor and date; provided, however, the Company shall not be obligated to re-issue notes if the Holder contemporaneously requests the Company to convert such remaining principal amount into Common Stock.

17. Payment of Collection, Enforcement and Other Costs. If: (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; or (ii) an attorney is retained to represent the Holder of this Note in any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay to the Holders all attorney's fees, costs and expenses incurred in connection therewith, in addition to all other amounts due hereunder.

18. Cancellation. After all principal and accrued interest at any time owed on this Note has been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

19. Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the holder at the principal office of the Company, for a new Note or Notes (in principal amounts of at least \$100,000) containing the same terms and conditions and representing in the aggregate the principal amount of this Note, and each such new Note will represent such portion of such principal amount as is designated by the holder at the time of such surrender. The date the Company initially issues this Note will be deemed to be the "Issuance Date" hereof regardless of the number of times a new Note shall be issued.

20. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

21. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the laws of the State of New York, without giving effect to provisions thereof regarding conflict of laws.

22. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of

compliance with the provisions giving rise to such remedy and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder of this Note shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

23. Specific Shall Not Limit General:

Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof.

24. Failure or Indulgence Not Waiver. No

failure or delay on the part of this Note in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

25. Notices. Whenever notice is required to be

given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Note to be signed by _____, its _____, as of the ____ day of _____, _____.

8X8, INC.

By: _____

Name: _____

Its: _____

Exhibit B - Form of Series B Note

EXHIBIT B

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN A FORM REASONABLY SATISFACTORY TO THE ISSUER, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO EITHER RULE 144A UNDER SAID ACT TO A QUALIFIED INSTITUTIONAL BUYER OR RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTION 2(d)(viii) HEREOF. THE PRINCIPAL AMOUNT AND THE INTEREST THEREON REPRESENTED BY THIS NOTE MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 2(d)(viii) OF THIS NOTE.

SERIES B CONVERTIBLE NOTE

_____, _____ \$ _____

FOR VALUE RECEIVED, 8X8, INC., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of _____ or registered assigns ("**Holder**") the principal amount of _____ Dollars (\$ _____), on the Maturity Date (as defined below) and to pay interest ("**Interest**") on the unpaid principal balance hereof at the rate of 4.0% per annum from the date hereof (the "**Issuance Date**") until the same becomes due and payable, whether at maturity or upon acceleration or by conversion or redemption in accordance with the terms hereof or otherwise. Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 365-day year and actual days elapsed and shall (A) be payable in cash or Common Stock at the option of the Company on the Interest Dates (as defined below) pursuant to Section 2(c)(ii) and (B) be included in the Additional Amount (as defined below) at the time of optional or mandatory conversion or redemption of the principal to which such interest relates in accordance with Section 1 hereof. Any amount of interest on this Note which is not paid when due shall bear interest at the rate of 18% per annum from the date thereof until the same is paid ("**Default Interest**").

1. Payments of Principal and Interest. All payments of principal and interest on this Note (to the extent such principal and/or interest is not converted into Common Stock in accordance with the terms hereof) shall be made in lawful money of the United States of America by wire transfer of immediately available funds to such account as the Holder may from time to time designate by written notice in accordance with the provisions of this Note. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day (as defined below), the same shall instead be due on the next succeeding day which is a Business Day and, in the case of any interest payment date which is not the date on which this Note is paid in full, the extension of the due date thereof shall not be taken into account for purposes of determining the amount of interest due on such date. For purposes of this Note, "**Business Day**" shall mean any day other than a Saturday, Sunday or a day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed. Each capitalized term used herein, and not otherwise defined, shall have the meaning ascribed thereto in the Securities Purchase Agreement, dated December 15, 1999, pursuant to which this Note and the Other Notes (as defined below) were originally issued (the "**Securities Purchase Agreement**"). This Note and the Other Notes issued by the Company pursuant to the Securities Purchase Agreement are collectively referred to in this Note as the "**Notes.**"

2. Conversion of Notes. This Note shall be convertible into shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 2.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) "**Additional Amount**" means, with respect to any principal amount of Notes, the sum of (A) accrued and unpaid Interest, if any, on such principal amount and (B) Default Interest, if any, on the interest referred to in the immediately preceding clause (A).

(ii) "**Change of Control**" means any of the following: (A) the consolidation, merger or other business combination of the Company with or into another Person (other than (I) a consolidation, merger or other business combination in which holders of the Company's voting power immediately prior to the transaction continue after the transaction to hold, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (II) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), (B) the sale or transfer of all or substantially all of the Company's assets, or (C) a purchase, tender or exchange offer made to and accepted by the holders of more than the 50% of the outstanding shares of Common Stock.

(iii) "**Closing Bid Price**" means, for any security as of any date, the last closing bid price for such security on the

Principal Market (as defined below) as reported by Bloomberg Financial Markets ("Bloomberg"), or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price is reported for such security by Bloomberg, the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Bid Price cannot be calculated for such security on such date on any of the foregoing bases, the Closing Bid Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holders of the Notes. If the Company and the Holders of the Notes are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 2(e)(iii) below with the term "Closing Bid Price" being substituted for the term "Market Price." All such determinations to be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

(iv) "**Conversion Amount**" means the sum of (A) the principal amount of this Note to be converted, redeemed or otherwise with respect to which this determination is being made and (B) the Additional Amount with respect to such principal amount.

(v) "**Conversion Price**" means, as of any Conversion Date (as defined in Section 2(d)(i)) or other date of determination, the product of (A) 117.5% and (B) the Market Price (as defined below) of the Common Stock on the date which is 90 days following the Issuance Date, subject to adjustment as provided herein.

(vi) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable for Common Stock.

(vii) "**Issuance Date**" means, with respect to each Note, the date of issuance of the applicable Note.

(viii) "**Maturity Date**" means the date which is three (3) years after the Issuance Date of this Note.

(ix) "**Market Price**" means, with respect to any security, that price which shall be computed as the arithmetic average of the Closing Bid Prices for such security during the five (5) consecutive trading days immediately preceding such date of determination. All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

(x) "**Options**" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(xi) "**Other Notes**" means the convertible notes (whether Series A or Series B), other than this Note, issued by the Company pursuant to the Securities Purchase Agreement.

(xii) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(xiii) "**Principal Market**" means the Nasdaq National Market.

(xiv) "**Registration Rights Agreement**" means that certain registration rights agreement between the Company and the initial holders of the Notes relating to the filing of a registration statement covering the resale of the shares of Common Stock issuable upon conversion of the Notes and exercise of the Warrants.

(xv) "**Restricted Securities**" means securities that are not eligible for resale pursuant to Rule 144(k) under the 1933 Act (or any successor provision).

(xvi) "**Series A Conversion Price**" means the conversion price of the Series A Notes (as defined in the Securities Purchase Agreement) as set forth in the Series A Notes.

(b) Holder's Conversion Right; Mandatory

Redemption. Subject to the provisions of Section 5, at any time or times on or after the Issuance Date (as defined below), the Holder shall be entitled to convert any part of the outstanding and unpaid Conversion Amount of this Note into fully paid and nonassessable shares of Common Stock in accordance with Section 5, at the Conversion Rate (as defined below). If any Conversion Amount of this Note remains outstanding on the Maturity Date, then, pursuant to Section 2(d)(vii), all of such Conversion Amount shall be redeemed by the Company. The Company shall not issue any fraction of a share of Common Stock upon any conversion. All shares of Common Stock (including fractions thereof) issuable upon conversion of this Note by the Holder shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a share of Common Stock. If, after the aforementioned aggregation, the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up or down to the nearest whole share.

(c) Conversion.

(i) Conversion Rate. The number of shares of Common Stock issuable upon conversion of a Conversion Amount of this Note pursuant to Section 2(b) shall be determined according to the following formula (the "**Conversion Rate**"):

Conversion Amount

Conversion Price

(ii) Cash Payment of Additional Amount. The Additional Amount shall be payable on the last day of each March and the last day of each September during the period beginning on the Issuance Date and ending on, and including, the Maturity Date (each an "**Interest Date**"). If an Interest Date is not a Business Day then the Additional Amount shall be due and payable on the Business Day immediately following the Interest Date. The Additional Amount shall be payable in cash or, at the Company's option, in shares of Common Stock ("**Interest Shares**") provided that the Additional Amount which accrued during any period shall be payable in Conversion Shares only if the Company provides written notice ("**Interest Election Notice**")

to each Holder of the Notes at least six (6) trading days prior to the Interest Date. Interest (as defined in the first paragraph of this Note) to be paid in shares of Common Stock shall be paid in a number of fully paid and nonassessable shares (rounded to the nearest whole share in accordance with Section 2(b)) of Common Stock equal to the quotient of (I) the Additional Amount and (II) the Market Price of the Common Stock on the applicable Interest Date. Notwithstanding the foregoing, the Company shall not be entitled to pay the Additional Amount in shares of Common Stock and shall be required to pay the Additional Amount in cash if (x) any event constituting a Triggering Event (as defined in Section 3(b)), or an event that with the passage of time would constitute a Triggering Event if not cured, has occurred and is continuing on the date of the Company's Interest Election Notice or on the Interest Date, unless otherwise consented to in writing by the holders of the Notes representing a majority of the Conversion Amounts of the Notes entitled to receive such Interest or (y) the Registration Statement (as defined in the Registration Rights Agreement) is not effective and available for the resale of all of the Registrable Securities (as defined in the Registration Rights Agreement), including but not limited to the Interest Shares, on the Date of the Company's Interest Election Notice or on the Interest Date. Any accrued and unpaid Interest which is not paid within five (5) Business Days of such accrued and unpaid Interest's Interest Date shall bear interest at the rate of 18.0% per annum from such Interest Date until the same is paid in full (the "**Default Interest**").

(d) Mechanics of Conversion. The conversion of this Note shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert this Note into shares of Common Stock on any date (the "**Conversion Date**"), the Holder hereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 6:00 p.m., Central Time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company with a copy thereof to the Company's designated transfer agent (the "**Transfer Agent**") and (B) if required by Section 2(d)(viii), surrender to a common carrier for delivery to the Company as soon as practicable following such date the original Note being converted (or an indemnification undertaking with respect to such Note in the case of its loss, theft or destruction). A holder delivering a Conversion Notice by facsimile shall use its best efforts to send a copy of the Conversion Notice by overnight mail to the Company by depositing such copy of the Conversion Notice with a nationally recognized overnight delivery service on the Conversion Date; provided, however, that the failure of any holder to satisfy its obligations under this sentence shall not effect the Conversion Date or the obligations of the Company for any conversion of this Note. The date of the Company's receipt of such copy of the Conversion Notice shall be deemed to occur on the Business Day immediately following the day such holder deposits the copy of the Conversion Notice with a nationally recognized overnight delivery service (the "**Overnight Receipt Date**").

(ii) Company's Response. Upon receipt by the Company of a facsimile or other copy of a Conversion Notice, the Company (1) shall immediately send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (2) on or before the second Business Day following the date of receipt by the Company of such Conversion Notice (the "**Share Delivery Date**"), (A) issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled, or (B) provided the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, upon the request of the holder, credit such aggregate number of shares of Common Stock to which the holder shall be entitled to the holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system. Subject to Section 2(d)(viii), if less than the Conversion Amount of this Note is submitted for conversion, then the Company shall, as soon as practicable and in no event later than five Business Days after receipt of the Note (the "**Note Delivery Date**") and at its own expense, issue and deliver to the Holder a new Note for the outstanding principal amount not converted.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Market Price or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the holder the number of shares of Common Stock that is not disputed and shall submit the disputed determinations or arithmetic calculations to the holder via facsimile within one (1) Business Day of receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the determination of the Market Price or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall

within one (1) Business Day submit via facsimile (A) the disputed determination of the Market Price to an independent, reputable investment bank selected by the Company and approved by the Holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(iv) Record Holder. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If within four (4) Business Days after the Overnight Receipt Date the Company shall fail to issue a certificate to the Holder or credit the Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of this Note or, subject to Section 2(d)(viii), the Company shall fail to issue a new Note representing the principal amount to which such holder is entitled, if any, pursuant to Section 2(d)(ii), in addition to all other available remedies which such Holder may pursue hereunder and under the Securities Purchase Agreement (including indemnification pursuant to Section 8 thereof), the Company shall pay additional damages to such Holder for each date after the Share Delivery Date such conversion is not timely effected and/or each date after the Note Delivery Date such new Note is not delivered in an amount equal to 0.5% of the product of (I) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which such Holder is entitled and, in the event the Company has failed to deliver a new Note to the Holder on or prior to the Note Delivery Date, the number of shares of Common Stock issuable upon conversion of the Conversion Amount represented by the new Note, as of the Note Delivery Date and (II) the Closing Bid Price of the Common Stock on the Share Delivery Date, in the case of the failure to deliver Common Stock, or the Note Delivery Date, in the case of failure to deliver a new Note. If the Company fails to pay the additional damages set forth in this Section 2(d)(v) within five Business Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of shares of Common Stock equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price in effect on such Conversion Date as specified by the holder in the Conversion Notice.

(B) Void Conversion Notice; Adjustment to Conversion Price. If for any reason the Holder has not received all of the shares of Common Stock prior to the ninth (9th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note, then the Holder, upon written notice to the Company, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any principal amount of this Note that has not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 2(d)(v)(A) or otherwise. If for any reason the Holder has not received all of the shares of Common Stock prior to the fourteenth (14th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note, then the Conversion Price of the principal amount of this Note with respect to which the Company has not delivered shares of Common Stock on or prior to such fourteenth (14th) Business Day shall be adjusted to the lesser of (I) the Conversion Price as in effect on the date on which the holder voided the Conversion Notice and (II) the lowest Closing Bid Price during the period beginning on the Conversion Date and ending on the date such holder voided the Conversion Notice, subject to further adjustment as provided in this Note.

(C) Redemption. If for any reason the Holder has not received all of the shares of Common Stock prior to the ninth (9th) Business Day after the Overnight Receipt Date with respect to a conversion of this Note (a "**Conversion Failure**"), then the Holder, upon written notice to the Company, may require that the Company redeem any or all of the Conversion Amount of this Note, including the Conversion Amount previously submitted for conversion and with respect to which the Company has not delivered shares of Common Stock, in accordance with Section 3.

(vi) Pro Rata Conversion and Redemption. In the event the Company receives a Conversion Notice from more than one holder of the Notes for the same Conversion Date and the Company can convert some, but not all, of the Notes submitted for conversion, the Company shall convert from each holder electing to have Notes converted at such time a pro rata amount of such holder's Conversion Amount submitted for conversion based on the Conversion Amount of the Notes submitted for conversion on such date by such holder relative to the Conversion Amount of all Notes submitted for conversion on such date.

(vii) Mandatory Redemption at Maturity. If any Conversion Amount of this Note remains outstanding on the Maturity Date, then all of the Conversion Amount shall be redeemed as of such date (a "**Maturity Date Mandatory Redemption**") for an amount in cash equal to the Conversion Amount on the Maturity Date (the "**Maturity Date Redemption Price**"). On the Maturity Date the Company shall pay to each Holder outstanding on the Maturity Date, by wire transfer of immediately available funds, an amount equal to the Maturity Date Redemption Price. If the Company shall fail to redeem all of the Conversion Amount of this Note outstanding on or prior to the date which is three (3) Business Days after the Maturity Date by payment of the Maturity Date Redemption Price, then in addition to any remedy the Holder may have under this Note, the Securities Purchase Agreement and the Registration Rights Agreement, the Holder shall have the option to require the Company to convert any or all of the Conversion Amount that the Company should have redeemed under this Section 2(d)(vii) and for which the Maturity Date Redemption Price (together with any interest thereon) has not been paid into the number of shares of Common Stock which the Company would have been required to issue if the Holder had given a Conversion Notice for such Conversion Amount (together with any interest thereon) on the Maturity Date at a Conversion Price equal to the lesser of (A) the Conversion Price in effect on the Maturity Date and (B) 95% of the Market Price of the Common Stock on the Maturity Date.

(viii) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the holder thereof shall not be required to physically surrender this Note to the Company unless the full Conversion Amount represented by this Note is being converted. The Holder and the Company shall maintain records showing the Conversion Amount so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon each such conversion. In the event of any dispute or discrepancy, such records of the Company shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if this Note is converted as aforesaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder may request, representing in the aggregate the remaining Conversion Amount represented by this Note. The Holder and any assignee, by acceptance of this Note or a new Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any portion of this Note, the Conversion Amount (including the principal of this Note) represented by this Note may be less than the principal amount and the accrued interest set forth on the face hereof.

(e) Taxes. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of Common Stock upon the conversion of Notes.

(f) Adjustments to Conversion Price -- Dilution and Other Events. In addition to any other adjustments provided herein, the Conversion Price will be subject to adjustment from time to time as provided in this Section 2(f).

(i) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the date of issuance of the Notes, the Company issues or sells, or in accordance with this Section 2(f) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with an Approved Stock Plan (as defined below) or Excluded Securities (as defined below) or upon conversion of the Notes or exercise of the Warrants (as defined in the Securities Purchase Agreement)) for a consideration per share less than a price (the "**Applicable Price**")

equal to the Market Price on the date of such issue or sale, then immediately after such issue or sale, the Conversion Price then in effect shall be reduced to an amount equal to the product of (x) the Conversion Price in effect immediately prior to such issue or sale and (y) the quotient of (I) the sum of (I) the product of the Applicable Price and the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale and (II) the consideration, if any, received by the Company upon such issue or sale, divided by (2) the product of (I) the Applicable Price multiplied by (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of determining the adjusted Conversion Price under this Section 2(f)(i), the following shall be applicable:

(A) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 2(f)(i)(A), the "lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Option" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 2(f)(i)(A) to the extent that such adjustment is based solely on the fact that the Convertible Securities issuable upon exercise of such Option are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

(B) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(f)(i)(B), the "price per share for which one share of Common Stock is issuable upon such conversion or exchange" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price had been or are to be made pursuant to other provisions of this Section 2(f)(i), no further adjustment of the Conversion Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 2(f)(i)(B) to the extent that such adjustment is based solely on the fact that such Convertible Securities are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

(C) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(f)(i)(C), if the terms of any Option or Convertible Security that was outstanding as of the date of issuance of this Note are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(D) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01. If any Common Stock, Options or Convertible Securities are issued or

sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the Market Price of such securities on the date of receipt. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of the Notes representing a majority of the Conversion Amount of the Notes then outstanding. If such parties are unable to reach agreement within 10 days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five business days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding. The determination of such appraiser shall be deemed binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(E) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (2) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(F) Certain Definitions. For purposes of this Section 2(f)(i), the following terms have the respective meanings set forth below:

(I) "**Approved Stock Plan**" shall mean any employee benefit plan which has been approved by the Board of Directors of the Company, pursuant to which the Company's securities may be issued to any employee, officer or director for services provided to the Company.

(II) "**Common Stock Deemed Outstanding**" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 2(f)(i)(A) and 2(f)(i)(B) hereof regardless of whether the Options or Convertible Securities are actually exercisable at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable upon conversion of the Notes or the exercise of the Warrants.

(III) "**Excluded Securities**" means any of the following (a) any issuance by the Company of securities in connection with a strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (b) shares of Common Stock issued by the Company in a firm commitment, underwritten public offering, (c) any issuance by the Company of securities as consideration for a merger or consolidation or the acquisition of a business, product, license or other assets of another person or entity and (d) any issuance by the Company of securities as consideration to a service provider, which is not an officer or director of the Company, for services provided to the Company on commercially reasonable terms and which in the aggregate is less than \$1,000,000.

(ii) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Company at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time combines (by combination, reverse stock split or otherwise) one or more classes of its

outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(iii) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2(f) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of the Notes; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 2(f).

(iv) Notices.

(A) Immediately upon any adjustment of the Conversion Price, the Company will give written notice thereof to each holder of the Notes setting forth in reasonable detail, and certifying, the calculation of such adjustment.

(B) The Company will give written notice to each holder of the Notes at least twenty (20) days prior to the date on which the Company closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Organic Change (as defined in Section 4(a)), dissolution or liquidation, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to each such holder.

(C) The Company will also give written notice to each holder of the Notes at least twenty (20) days prior to the date on which any Organic Change, dissolution or liquidation will take place, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to each such holder.

3. Redemption at Option of Holder.

(a) Redemption Option Upon Triggering Event.

In addition to all other rights of the Holder contained herein, after a Triggering Event (as defined below), the Holder shall have the right, at the Holder's option, to require the Company to redeem all or a portion of this Note at a price equal to (x) with respect to a Triggering Event described in clauses (iii) or (vii) of Section 3(b) below, 110% of the Conversion Amount, and (y) with respect to a Triggering Event described in clauses (i), (ii), (iv), (v) or (vi) of Section 3(b) below, the greater of (i) 110% of the Conversion Amount and (ii) the product of (A) the Conversion Rate for the Conversion Amount to be redeemed in effect at such time as such holder delivers a Notice of Redemption at Option of Buyer (as defined below) and (B) the Closing Bid Price in effect on the date such holder delivers a Notice of Redemption at Option of Buyer or, if such day is not a trading day, the immediately preceding trading day on which the Principal Market, or the market or exchange where the Common Stock is then traded, is open for trading ("**Redemption Price**").

(b) "Triggering Event". A "**Triggering Event**" shall be deemed to have occurred at such time as any of the following

events:

(i) the failure of the Registration Statement to be declared effective by the SEC on or prior to the Effectiveness Deadline (as defined in the Registration Rights Agreement);

(ii) while the Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of the Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to the Holder for sale of all of such Holder's Registrable Securities (as defined in the Registration Rights Agreement) in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of five consecutive trading days or any 10 trading days in a 365-day period (excluding days during an Allowable Grace Period);

(iii) the suspension from trading or failure of the Common Stock to be listed on the Nasdaq National Market or The New York Stock Exchange, Inc. or The American Stock Exchange, Inc. for a period of five consecutive trading days or for more than an aggregate of 10 trading days in any 365-day period;

(iv) the Company's or the Transfer Agent's notice to any holder of Notes, including by way of public announcement, at any time, of its intention not to comply with a request for conversion of any Notes into shares of Common Stock that is tendered in accordance with the provisions of the Notes;

(v) a Conversion Failure (as defined in Section 2(d)(v)(C));

(vi) upon the Company's receipt of a Conversion Notice, the Company shall not be obligated to issue the shares of Common Stock issuable upon such conversion of Notes due to the provisions of Section 12; or

(vii) the Company breaches any representation, warranty, covenant or other term or condition of the Securities Purchase Agreement, the Registration Rights Agreement, the Warrants, this Note or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated thereby and hereby, except to the extent that such breach would not have a Material Adverse Effect (as defined in Section 3(a) of the Securities Purchase Agreement) and except, in the case of a breach of a covenant which is curable, only if such breach continues for a period of at least 10 days.

(c) Mechanics of Redemption at Option of Buyer.

Within one (1) Business Day after the occurrence of a Triggering Event described in clauses (i), (ii), (iii), (iv), (v) or (vi) of Section 3(b), or within one (1) Business Day of the Company becoming aware of a Triggering Event described in clause (vii) of Section 3(b), as the case may be, the Company shall deliver written notice thereof via facsimile and overnight courier ("**Notice of Triggering Event**") to each holder of the Notes. At any time after the earlier of the Holder's receipt of a Notice of Triggering Event and the Holder becoming aware of a Triggering Event, the Holder may require the Company to redeem all of such Holder's Notes by delivering written notice thereof via facsimile and overnight courier ("**Notice of Redemption at Option of Buyer**") to the Company, which Notice of Redemption at Option of Buyer shall indicate (i) the Conversion Amount of the Notes that the Holder is electing to redeem and (ii) the applicable Redemption Price, as calculated pursuant to Section 3(a) above.

(d) Payment of Redemption Price. Upon the Company's receipt of a Notice(s) of Redemption at Option of Buyer from any holder of Notes, the Company shall immediately notify each holder of Notes by facsimile of the Company's receipt of such notices. The Company shall deliver the applicable Redemption Price to the Holder within 10 Business Days after the Company's receipt of a Notice of Redemption at Option of Buyer; provided that the Holder's Notes shall have been delivered to the Company. If more than one holder of Notes submits Notes for redemption and the Company is unable to redeem all of the Notes submitted for redemption, the Company shall redeem a pro rata amount from each holder of Notes based on the Conversion Amount represented by the Notes submitted for redemption by such holder relative to the aggregate Conversion Amounts of all Notes for redemption by all holders of Notes.

(e) Void Redemption. In the event that the Company does not pay the Redemption Price within the time period set forth in Section 3(d), at any time thereafter and until the Company pays such unpaid applicable Redemption Price in full, the Holder shall have the option (the "**Void Optional Redemption Option**") to, in lieu of redemption, require the Company to promptly return to the Holder the Note that was submitted for redemption by such Holder under this Section 3 and for which the applicable Redemption Price (together with any interest thereon) has not been paid, by sending written notice thereof to the Company via facsimile (the "**Void Optional Redemption Notice**"). Upon the Company's receipt of such Void Optional Redemption Notice, (i) the Notice of Redemption at Option of Buyer shall be null and void with respect to that portion of the Note subject to the Void Optional Redemption Notice, (ii) the Company shall immediately return the Note subject to the Void Optional Redemption Notice, and (iii) the Conversion Price of such portion of the Note shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Optional Redemption Notice is delivered to the Company and (B) the lowest Closing Bid Price during the period beginning on the date on which the Notice of Redemption at Option of Buyer is delivered to the Company and ending on the date on which the Void Optional Redemption Notice is delivered to the Company.

(f) Disputes; Miscellaneous. In the event of a dispute as to the determination of the Closing Bid Price or the arithmetic calculation of the Redemption Price, such dispute shall be resolved pursuant to Section 2(d)(iii) above with the term "Closing Bid Price" being substituted for the term "Market Price" and the term "Redemption Price" being substituted for the term "Conversion Rate". The Holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice. In the event of a redemption pursuant to this Section 3 of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note representing the remaining Conversion Amount which has not been redeemed.

4. Other Rights of Holders.

(a) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to another Person or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "**Organic Change**." Prior to the consummation of any (i) sale of all or substantially all of the Company's assets to an acquiring Person or (ii) other Organic Change following which the Company is not a surviving entity, the Company will secure from the Person purchasing such assets or the successor resulting from such Organic Change (in each case, the "**Acquiring Entity**") a written agreement (in form and substance reasonably satisfactory to the holders of the Notes representing a majority of the Conversion Amounts of the Notes then outstanding) that the Acquiring Entity will assume the obligations represented by this Note (including, without limitation, the right to convert this Note into the securities or assets issued to the holders of the Common Stock in connection with such Organic Change).

(b) Optional Redemption Upon Corporate Event. In addition to the rights of the Holder under Section 4(a), upon a Corporate Event (as defined below) of the Company the Holder shall have the right, at the

Holder's option, to require the Company to redeem all or a portion of the Conversion Amount represented by this Note equal to 110% of the Conversion Amount ("**Corporate Event Redemption Price**"). No sooner than 15 days nor later than 10 days prior to the consummation of a Corporate Event, but not prior to the public announcement of such Corporate Event, the Company shall deliver written notice thereof via facsimile and overnight courier (a "**Notice of Corporate Event**") to the Holder. At any time during the period beginning after receipt of a Notice of Corporate Event (or, in the event a Notice of Corporate Event is not delivered at least 10 days prior to a Corporate Event, at any time on or after the date which is 10 days prior to a Corporate Event) and ending on the date of such Corporate Event, the Holder may require the Company to redeem all or a portion of the Conversion Amount of this Note then outstanding by delivering written notice thereof via facsimile and overnight courier (a "**Notice of Redemption Upon Corporate Event**") to the Company, which Notice of Redemption Upon Corporate Event shall indicate (i) the Conversion Amount the Holder is submitting for redemption, and (ii) the applicable Corporate Event Redemption Price, as calculated pursuant to Section 4(b). Upon the Company's receipt of a Notice(s) of Redemption Upon Corporate Event from any holder of Notes, the Company shall promptly, but in no event later than one (1) Business Day following such receipt, notify the Holder of this Note by facsimile of the Company's receipt of such Notice(s) of Redemption Upon Corporate Event. The Company shall deliver the applicable Corporate Event Redemption Price simultaneous with the consummation of the Corporate Event; provided that, if required by Section 2(d)(viii), this Note shall have been so delivered to the Company. Payments provided for in this Section 4(b) shall have priority to payments to the Company's stockholders in connection with a Corporate Event. For purposes of this Section 4(b), "**Corporate Event**" means any of the following in which the consideration to be paid per share is less than the Conversion Price: (i) the consolidation, merger or other business combination of the Company with or into another Person (other than (A) a consolidation, merger or other business combination in which holders of the Company's voting power immediately prior to the transaction continue after the transaction to hold, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company), (ii) the sale or transfer of all or substantially all of the Company's assets, or (iii) a purchase, tender or exchange offer made to and accepted by the holders of more than the 50% of the outstanding shares of Common Stock.

(c) Purchase Rights. If at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) Right to Exchange Note. At any time prior to the Maturity Date and so long as any principal amount is still outstanding under this Note, if the Company issues or agrees to issue any equity securities or any instrument convertible into or exercisable or exchangeable for equity securities of the Company ("**New Equity Securities**"), then within one Business Day after the issuance of such New Equity Securities, the Company shall make an irrevocable exchange offer to the Holder on such terms and conditions as the Holder shall reasonably require to either exchange any or all of the Conversion Amount of this Note for a like amount in value of the New Equity Securities or replace the Conversion Price then in effect with the issuance price or conversion price as determined over time pursuant to those documents which dictate the terms of the New Equity Security. Each such exchange offer shall remain open for at least 15 Business Days or until such time as the Holder accepts or rejects, in writing, such exchange offer. In the event the Holder elects to replace the existing Conversion Price, then from and after the date of the Company's receipt of the Holder's written acceptance pursuant to this Section 4(d), the Conversion Price will automatically be replaced with the issuance price or conversion price formula of the New Equity Security. If the consummation or terms of the New Equity Security constitutes material non-public information, then the Company shall disclose the terms of such New Equity Security on a Form 8-K within one Business Day after the initial issuance of such New Equity Security. The Company's obligation to provide the "New Financing Notice" and offer to exchange the existing Note or replace the existing Conversion Price shall not apply to (i) the Company's issuance of securities (A) as consideration of a merger or consolidation or (B) in connection with any strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (ii) the issuance of Common Stock in a firm commitment, underwritten public offering, (iii) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the Issuance Date provided the terms of such securities are not amended after the Issuance Date, and (iv) the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option plan, restricted stock plan or stock purchase plan for the benefit of the Company's employees, officers or directors for services provided to the Company.

5. Limitations on Beneficial Ownership. The

Company shall not be obligated to effect any conversion of this Note and no Holder shall have the right to convert any Conversion Amount pursuant to Section 2(b) to the extent that after giving effect to such conversion such Person (together with such Person's affiliates) would have acquired, through conversion of the Notes or otherwise, in excess of 10.00% of the outstanding shares of the Common Stock following such conversion during the 60-day period ending on and including the date of such conversion. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by a Person and its affiliates or acquired by a Person and its affiliates, as the case may be, shall include the number of shares of Common Stock issuable upon conversion of the Conversion Amount of such Notes with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted Conversion Amount of such Notes beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, the Warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Person and its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 5(a), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 5, in determining the number of outstanding shares of Common Stock a holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within two (2) Business Days confirm orally and in writing to the Holder the number of shares Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion of the Conversion Amount of such Notes and exercising the Warrants by the Person and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

6. Redemption at the Company's Election. At

any time or times during the period beginning on the first anniversary of the Issuance Date and ending on and including the Maturity Date, the Company shall have the right, in its sole discretion, to require that some or all of the outstanding Conversion Amount of the outstanding Notes issued on such Issuance Date be redeemed ("**Redemption at Company's Election**") for consideration equal to (i) in the event that the Company's Election Redemption Date (as defined below) is prior to the date which is the second anniversary of the Issuance Date, 175% of the Conversion Amount of such Notes to be redeemed on the Company Election Redemption Date or (ii) in the event that the Company's Election Redemption Date is on or after the date which is the second anniversary of the Issuance Date, 150% of the Conversion Amount of such Notes to be redeemed on the Company Election Redemption Date (the "**Company's Election Redemption Price**"); provided that the Conditions to Redemption at the Company's Election (as set forth below) are satisfied. The Company shall exercise its right to Redemption at Company's Election by providing each holder of Notes written notice ("**Notice of Redemption at Company's Election**") at least 20 Business Days but not more than 30 Business Days prior to the date of consummation of such redemption ("**Company's Election Redemption Date**"). If the Company elects to require redemption of some, but not all, of the Conversion Amount of the Notes then outstanding, the Company shall require redemption of the pro rata amount from each holder of such Notes based on the principal amount of Notes purchased by such holder relative to the aggregate principal amount of all Notes purchased pursuant to the Securities Purchase Agreement (such amount with respect to the Holder being referred to herein as its "**Pro Rata Redemption Amount**"). The Notice of Redemption at Company's Election shall indicate (x) the Conversion Amount of the Notes the Company has elected to redeem from all holder of Notes, (y) the Company's Election Redemption Date, and (z) each holder's Pro Rata Redemption Amount. If the Company has exercised its right of Redemption at Company's Election and the conditions of this Section 6, including the Conditions to Redemption at Company's Election, have been satisfied, then each holder's Pro Rata Redemption Amount shall be redeemed as of the Company's Election Redemption Date by payment by the Company to each holder of the Notes of the Company's Election Redemption Price. If required by Section 2(d)(viii), all holders of the Notes shall thereupon and within two Business Days after the Company's Election Redemption Date or such earlier date as the Company and each holder of Notes mutually agree, surrender all Notes being redeemed on such date to the Company. If the Company fails to pay the full Company's Election Redemption Price with respect to this Note then the Redemption at Company's Election shall be null and void with respect to this Note and the Holder shall be entitled to all the rights of a holder of outstanding Notes. "**Conditions to Redemption at the Company's Election**" means the following conditions: (i) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, the Company shall have delivered Conversion Shares upon conversion of the Notes to the holders of the Notes on a timely basis as set forth in Section 2(d)(ii) of this Note; (ii) on each day during the period beginning 30 days prior to the date of Notice of Redemption at Company's Election and ending on and including the Company's Election Redemption Date the Registration Statement shall be effective and available for the sale of at least all of the Registrable Securities (as defined in the Registration Rights Agreement); (iii) on each day during the period beginning 30 days prior to the date of Notice of Redemption at Company's Election and ending on and including the Company's Election Redemption Date, the Common Stock is designated for quotation on the Nasdaq National Market or listed on The New York Stock Exchange, Inc., is not suspended from trading and neither delisting nor suspension by such exchanges shall have been threatened either (A) in writing by such exchanges or (B) by falling below the minimum listing maintenance requirements of such exchanges; (iv) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, there shall not have occurred a Triggering Event or an event that with the passage of time and without being cured would constitute a Triggering Event; (v) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, there shall not have occurred the

consummation of a Change of Control or the public announcement of a pending Change of Control which has not been terminated; and (vi) the Company otherwise has satisfied its obligations in all material respects and is not in default in any material respect under this Note, the Securities Purchase Agreement, the Warrants and the Registration Rights Agreement. Notwithstanding the above, but subject to Section 5, the Holder may convert any Conversion Amount (including Conversion Amounts selected for redemption) into Common Stock pursuant to Section 2(b) on or prior to the date immediately preceding the Company's Election Redemption Date. If the Company fails to timely pay any Company's Election Redemption Price in accordance with this Section 6, then the Company shall not be permitted to submit another Notice of Redemption at Company's Election without the prior written consent of the holders of the Notes representing at least two-thirds (2/3) of the Conversion Amounts of the Notes then outstanding.

7. Series B Redemption at the Company's Election. On the date which is 90 days following the Issuance Date (the "**Series B Redemption Trigger Date**"), the Company shall have the right, in its sole discretion, to require that all of the outstanding Conversion Amounts of the outstanding Series B Notes issued on such Issuance Date be redeemed ("**Series B Redemption at Company's Election**") by providing written notice to each holder of the Series B Notes on such date ("**Notice of Series B Redemption at Company's Election**"), provided that the Series B Conditions to Redemption at the Company's Election (as set forth below) are satisfied. The Company shall redeem the Series B Notes for consideration equal to (i) in the event that on the Series B Redemption Trigger Date the Conversion Price is less than the quotient of (A) the Series A Conversion Price on the Series B Redemption Trigger Date, divided by (B) 1.175 (the "**Redemption Market Price**"), the Conversion Amount of such Series B Notes to be redeemed on the Company's Series B Election Redemption Date (as defined below) or (ii) in the event that on the Series B Redemption Trigger Date the Conversion Price is greater than 200% of the Redemption Market Price, 107.5% of the principal amount of the Series B Note to be redeemed on the Company's Series B Election Redemption Date (the "**Company's Series B Election Redemption Price**").

The Notice of Series B Redemption at Company's Election shall indicate the date on which the Series B Redemption at Company's Election will take place which date shall be at least 5 Business Days but not more than 10 Business Days after the date of receipt by each holder of the Series B Notes of the Notice of Series B Redemption at the Company's Election ("**Company's Series B Election Redemption Date**"). If the Company has exercised its right of Series B Redemption at Company's Election and the conditions of this Section 7, including the Series B Conditions to Redemption at Company's Election, have been satisfied, then each holder's Series B Notes shall be redeemed as of the Company's Series B Election Redemption Date by payment by the Company to each holder of the Series B Notes of the Company's Series B Election Redemption Price. All holders of the Series B Notes shall thereupon and within two Business Days after the Company's Series B Election Redemption Date or such earlier date as the Company and each holder of Series B Notes mutually agree, surrender all Series B Notes being redeemed on such date to the Company.

If the Company fails to pay the full Company's Series B Election Redemption Price with respect to this Note then the Series B Redemption at Company's Election shall be null and void with respect to this Note and the Holder shall be entitled to all the rights of a Holder of outstanding Series B Notes. "**Series B Conditions to Redemption at the Company's Election**" means the following conditions: (i) during the period beginning on the Issuance Date and ending on and including the Company's Series B Election Redemption Date, the Company shall have delivered Conversion Shares upon conversion of the Series A Notes to the holders of the Series A Notes on a timely basis as set forth in Section 2(d)(ii) of the Notes; (ii) on the Series B Redemption Trigger Date the Conversion Price shall either be (A) less than the Redemption Market Price or (B) greater than 200% of the Redemption Market Price; and (iii) on each day during the period beginning 30 days prior to the date of Notice of Series B Redemption at Company's Election and ending on and including the Company's Series B Election Redemption Date, the Common Stock is designated for quotation on the Nasdaq National Market or listed on The New York Stock Exchange, Inc., is not suspended from trading and neither delisting nor suspension by such exchanges shall have been threatened either (A) in writing by such exchanges or (B) by falling below the minimum listing maintenance requirements of such exchanges. If the Company fails to timely pay any Company's Series B Election Redemption Price in accordance with this Section 7, then the Company shall not be permitted to submit another Notice of Series B Redemption at Company's Election without the prior written consent of the holders of the Series B Notes representing at least two-thirds (2/3) of the Conversion Amounts of the Series B Notes then outstanding.

8. Reservation of Shares. The Company shall, so long as any principal amount of the Note is outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Notes, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Conversion Amounts of the Notes then outstanding; provided that the number of shares of Common Stock so reserved shall at no time be less than 115% of the number of shares of Common Stock for which the Conversion Amounts of the Notes are at any time convertible. The initial number of shares of Common Stock reserved for conversions of the Notes and each increase in the number of

shares so reserved shall be allocated pro rata among the holders of the Notes based on the principal amount of the Notes held by each holder at the time of issuance of the Notes or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's Notes, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the remaining holders of the Notes, pro rata based on the principal amount of the Notes then held by such holders.

9. Voting Rights; Rank. Holders of the Notes shall have no voting rights, except as required by law, including but not limited to the General Corporation Law of the State of Delaware, and as expressly provided in this Note. Payments of principal and interest and other payments due under this Note, except as otherwise provided herein, shall rank pari passu with and shall not be subordinated to any other unsecured debt obligations of the Company.

10. Restriction on Redemption and Dividends. Until all of the Conversion Amount of this Note has been converted, redeemed or otherwise satisfied as provided herein, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, its capital stock without the prior express written consent of the holders of Notes representing a majority of the Conversion Amounts of the Notes then outstanding, except for payments on convertible securities of the Company outstanding on the Issuance Date pursuant to the terms of such convertible securities as in effect on the Issuance Date.

11. Participation. The holders of the Notes shall be entitled to such dividends paid and distributions made to the holders of Common Stock to the same extent as if such holders of Notes had converted the Notes into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

12. Limitation on Number of Conversion Shares. The Company shall not be obligated to issue any shares of Common Stock upon conversion of this Note if the issuance of such shares of Common Stock would exceed that number of shares of Common Stock which the Company may issue upon conversion of the Notes (the "**Exchange Cap**") without breaching the Company's obligations under the rules or regulations of the Principal Market, or the market or exchange where the Common Stock is then traded, except that such limitation shall not apply in the event that the Company (a) obtains the approval of its stockholders as required by the applicable rules of the Principal Market, or the market or exchange where the Common Stock is then traded, (or any successor rule or regulation) for issuances of Common Stock in excess of such amount or (b) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the holders of a majority of the Conversion Amount of the Notes then outstanding. Until such approval or written opinion is obtained, no purchaser of Notes pursuant to the Securities Purchase Agreement (the "**Purchasers**") shall be issued, upon conversion of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap amount multiplied by (ii) a fraction, the numerator of which is the principal amount of the Notes issued to such Purchaser pursuant to the Securities Purchase Agreement and the denominator of which is the aggregate principal amount of all Notes issued to the Purchasers pursuant to the Securities Purchase Agreement (the "**Cap Allocation Amount**"). In the event that any Purchaser shall sell or otherwise transfer any of such Purchaser's Notes, the transferee shall be allocated a pro rata portion of such Purchaser's Cap Allocation Amount. In the event that any holder of Notes, shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Cap Allocation Amount, then the difference between such holder's Cap Allocation Amount and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Cap Allocation Amounts of the remaining Holders of Notes on a pro rata basis in proportion to Conversion Amount of Notes then held by each such Holder.

13. Reissuance of Notes. Subject to Section 2(d)(viii) in the event of a conversion or redemption pursuant to this Note of less than all of the Conversion Amount represented by this Note, the Company shall promptly cause to be issued and delivered to the Holder, upon tender by the Holder of this Note converted or redeemed, a new note of like tenor representing the remaining principal amount of this Note which has not been so converted or redeemed.

14. Defaults and Remedies.

(a) **Events of Default.** An "Event of Default" is: (i) default for thirty (30) days in payment of interest or Default Interest on this Note on or after the Maturity Date; (ii) default in payment of the principal amount of this Note when and as due; (iii) failure by the Company for thirty (30) days after notice to it to comply with any other material provision of this Note; (iv) any default under or acceleration prior to maturity of any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed of at least \$500,000 by the Company or for money borrowed the repayment of at least \$500,000 of which is guaranteed by the Company, whether such indebtedness or guarantee now exists or shall be created hereafter; (v) if the Company pursuant to or within the meaning of any Bankruptcy Law; (A) commences a voluntary case; (B) consents to the entry of an order for relief against it in an involuntary case; (C) consents to the appointment of a Custodian of it or for all or substantially all of its property; (D) makes a general assignment for the benefit of its creditors; or (E) admits in writing that it is generally unable to pay its debts as the same become due; or (vi) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (1) is for relief against the Company in an involuntary case; (2) appoints a Custodian of the Company or for all or substantially all of its property; or (3) orders the liquidation of the Company or any subsidiary, and the order or decree remains unstayed and in effect for ninety (90) days. The Term "**Bankruptcy Law**" means Title 11, U.S. Code, or any similar Federal or State Law for the relief of debtors. The term "**Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

(b) **Remedies.** If an Event of Default occurs and is continuing, the Holder of this Note may declare all of this Note, including any interest and Default Interest and other amounts due, to be due and payable immediately, except that in the case of an Event of Default arising from events described in clauses (iv) and (v) of Section 14(a), this Note shall become due and payable without further action or notice. Holder may not enforce the provisions of this Section 14 except as provided in this Section 14. In addition to any remedy such holder of the Notes may have under this Note and the Securities Purchase Agreement, such unpaid amount shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full

15. **Vote to Change the Terms of the Notes.** The Notes and any provision hereof or thereof may only be amended by an instrument in writing signed by the Company and holders of a majority of the aggregate Conversion Amount of the Notes then outstanding. The term "Note" and all reference thereto, as used throughout this instrument, shall mean this instrument (and the other Notes issued pursuant to the Securities Purchase Agreement) as originally executed, or if later amended or supplemented, then as so amended or supplemented.

16. **Rule 144A Information Requirement.** Within the period prior to the expiration of the holding period applicable to sales hereof under Rule 144(k) under the 1933 Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to the Holder and the holder of any Common Stock issued upon exercise of this Note which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of this Note from the Holder, the information required pursuant to Rule 144A(d)(4) under the 1933 Act upon the request of the Holder and it will take such further action as the Holder may reasonably request, all to the extent required from time to time to enable the Holder to sell this Note without registration under the 1933 Act within the limitation of the exemption provided by Rule 144A, as Rule 144A may be amended from time to time. Upon the request of the Holder, the Company will deliver to the Holder a written statement as to whether it has complied with such requirements.

17. **Lost or Stolen Notes.** Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of an indemnification undertaking by the Holder to the Company in a customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver new notes of like tenor and date; provided, however, the Company shall not be obligated to re-issue notes if the Holder contemporaneously requests the Company to convert such remaining principal amount into Common Stock.

18. **Payment of Collection, Enforcement and Other Costs.** If: (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; or (ii) an attorney is retained to represent the Holder of this Note

in any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay to the Holders all attorney's fees, costs and expenses incurred in connection therewith, in addition to all other amounts due hereunder.

19. Cancellation. After all principal and accrued interest at any time owed on this Note has been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

20. Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the holder at the principal office of the Company, for a new Note or Notes (in principal amounts of at least \$100,000) containing the same terms and conditions and representing in the aggregate the principal amount of this Note, and each such new Note will represent such portion of such principal amount as is designated by the holder at the time of such surrender. The date the Company initially issues this Note will be deemed to be the "Issuance Date" hereof regardless of the number of times a new Note shall be issued.

21. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

22. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the laws of the State of New York, without giving effect to provisions thereof regarding conflict of laws.

23. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder of this Note shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

24. Specific Shall Not Limit General; Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof.

25. Failure or Indulgence Not Waiver. No failure or delay on the part of this Note in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

26. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement.

IN WITNESS WHEREOF, the Company has caused this
Note to be signed by _____, its _____, as of the
____ day of _____, ____.

8X8, INC.

By: _____

Name: _____

Its: _____

EXHIBIT C

FORM OF WARRANT

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN FORM REASONABLY SATISFACTORY TO THE ISSUER, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO EITHER RULE 144A UNDER SAID ACT TO A QUALIFIED INSTITUTIONAL BUYER OR RULE 144 UNDER SAID ACT. ANY SUCH OFFER, SALE, ASSIGNMENT OR TRANSFER MUST ALSO COMPLY WITH THE APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY THE SECURITIES.

8X8,
INC.

Warrant To
Purchase Common Stock

Warrant No.: _____ Number of Shares: _____

Date of Issuance: December __, 1999

8x8, Inc., a Delaware corporation (the "**Company**"), hereby certifies that _____, the registered holder hereof or its permitted assigns, is entitled, subject to the terms set forth below, to purchase from the Company upon surrender of this warrant (this "**Warrant**"), at any time or times on or after the date hereof, but not after 11:59 P.M. Central Time on the Expiration Date (as defined herein) a number of fully paid nonassessable shares of Common Stock (as defined herein) of the Company equal to the quotient of the principal amount of the Series [**A** / **B**] Notes held by the holder of this Warrant on the Series [**A** / **B**] Market Price Date (as defined below) divided by the Conversion Price (as defined in the Series [**A** / **B**] Notes) of the Series [**A** / **B**] Notes (as defined below) on the Series [**A** / **B**] Market Price Date (the "**Warrant Shares**") at the purchase price per share provided in Section 1(b) below; provided, however, that the Company shall not effect the exercise of this Warrant and no holder of this Warrant shall have the right to exercise this Warrant to the extent that after giving effect to such exercise such Person (together with such Person's affiliates) (A) would beneficially own in excess of 10.00% of the outstanding shares of the Common Stock following such conversion or (B) would have acquired, through the exercise of this Warrant or otherwise, in excess of 10.00% of the outstanding shares of the Common Stock following such exercise during the 60-day period ending on and including such exercise date. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by a Person and its affiliates or acquired by a Person and its affiliates, as the case may be, shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, non-exercised Warrants beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, the Notes (as defined below)) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Person and its affiliates. Except as set forth in the preceding sentence, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Warrant, in determining the number of outstanding shares of Common Stock a holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of any a holder, the Company shall within two (2) Business Days confirm orally and in writing to any such holder the number of shares Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the exercise of this Warrant and the conversion of Notes by such holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

- a. **Securities Purchase Agreement.** This Warrant is one of the warrants of the Company (the "**Note Warrants**") issued pursuant to the Securities Purchase Agreement, dated as of December 15, 1999, among the Company and the investors set forth on the Schedule of Buyers attached thereto (the "**Securities Purchase Agreement**").
- b. **Definitions.** The following words and terms as used in this Warrant shall have the following meanings:
- i. "**Approved Stock Plan**" shall mean any employee benefit plan which has been approved by the Board of Directors of the Company, pursuant to which the Company's securities may be issued to any employee, officer, director, consultant or other service provider for services provided to the Company.
 - ii. "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.
 - iii. "**Closing Bid Price**" means, for any security as of any date, the last closing bid price for such security on the Principal Market (as defined below) as reported by Bloomberg Financial Markets ("**Bloomberg**"), or, if the Principal Market is not the principal trading market for such security, the last closing bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price is reported for such security by Bloomberg, the last closing trade price for such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Bid Price cannot be calculated for such security on such date on any of the foregoing bases, the Closing Bid Price of such security on such date shall be the fair market value as mutually determined by the Company and the holders of the Notes. All such determinations to be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.
 - iv. "**Common Stock**" means (i) the Company's common stock, par value \$0.001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification of such Common Stock.
 - v. "**Common Stock Deemed Outstanding**" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 8(b)(i) and 8(b)(ii) hereof regardless of whether the Options (as defined below) or Convertible Securities (as defined below) are actually exercisable or convertible at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable upon exercise of the Warrants.
 - vi. "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable for Common Stock.
 - vii. "**Excluded Securities**" means any of the following (a) any issuance by the Company of securities in connection with a strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (b) shares of Common Stock issued by the Company in a firm commitment, underwritten public offering, (c) any issuance by the Company of securities as consideration for a merger or consolidation or the acquisition of a business, product, license or other assets of another person or entity and (d) any issuance by the Company of securities as consideration to a service provider, which is not an officer or director of the Company, for services to the Company on commercially reasonable terms and which in the aggregate is less than \$1,000,000.
 - viii. "**Expiration Date**" means the date three (3) years from the date of this Warrant or, if such date falls on a Saturday, Sunday or other day on which banks are required or authorized to be closed in the City of New York or on which trading does not take place on the principal exchange or automated quotation system on which the Common Stock is traded (a "**Holiday**"), the next date that is not a Holiday.
 - ix. "**Notes**" means the Series A Notes (as defined below) and the Series B Notes (as defined below).
 - x. "**Options**" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

- xi. **"Other Securities"** means those rights, warrants, options and convertible securities of the Company issued prior to, and outstanding on, the date of issuance of this Warrant.
- xii. **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.
- xiii. **"Principal Market"** means the Nasdaq National Market.
- xiv. **"Registration Rights Agreement"** means the Registration Rights Agreement, dated December 15, 1999, by and among the Company and the investors listed on the Schedule of Investors attached thereto.
- xv. **"Restricted Securities"** means securities that are not eligible for resale pursuant to Rule 144(k) under the 1933 Act (or any successor provision).
- xvi. **"Securities Act"** means the Securities Act of 1933, as amended.
- xvii. **"Series [A / B] Market Price Date"** means the [date which is 36 trading days after the Warrant Date {Series A} / date which is 11 trading days after the date which is 90 days after the Warrant Date {Series B}].
- xviii. **"Series A Notes"** means the Series A Convertible Notes issued pursuant to the Securities Purchase Agreement.
- xix. **"Series B Notes"** means the Series B Convertible Notes issued pursuant to the Securities Purchase Agreement.
- xx. **"Warrant"** means this Warrant and all Warrants issued in exchange, transfer or replacement of any thereof.
- xxi. **"Warrant Exercise Price"** shall be equal to the Conversion Price (as defined in the [Series A Notes/Series B Notes]), of the [Series A/Series B] Notes, then in effect (or if no [Series A / Series B] Notes are outstanding, then the Conversion Price of the [Series A / Series B] Notes as if such [Series A / Series B] Notes were then outstanding), subject to adjustment as hereinafter provided.

Section 2. Exercise of Warrant.

- a. Subject to the terms and conditions hereof, this Warrant may be exercised by the holder hereof then registered on the books of the Company, in whole or in part, at any time on any Business Day on or after the opening of business on the date hereof and prior to 6:00 P.M. Central Time on the Expiration Date by (i) delivery of a written notice, in the form of the subscription notice attached as Exhibit A hereto (the "**Exercise Notice**"), of such holder's election to exercise this Warrant, which notice shall specify the number of Warrant Shares to be purchased, (ii) (A) payment to the Company of an amount equal to the Warrant Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (plus any applicable issue or transfer taxes) (the "**Aggregate Exercise Price**") in cash or by check or wire transfer or (B) by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 2(e)), and (iii) the surrender to a common carrier for delivery to the Company as soon as practicable following such date, this Warrant (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft or destruction); provided, that if such Warrant Shares are to be issued in any name other than that of the registered holder of this Warrant, such issuance shall be deemed a transfer and the provisions of Section 7 shall be applicable. In the event of any exercise of the rights represented by this Warrant in compliance with this Section 2(a), a certificate or certificates for the Warrant Shares so purchased, in such denominations as may be requested by the holder hereof and registered in the name of, or as directed by, the holder, shall be delivered at the Company's expense to, or as directed by, such holder as soon as practicable, and in no event later than two Business Days, after the Company's receipt of the Exercise Notice, the Aggregate Exercise Price (or notice of a Cashless Exercise) and this Warrant (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft or destruction) (collectively, the "**Exercise Documents**"). Upon delivery of the Exercise Notice and Aggregate Exercise Price referred to in clause (ii)(A) above or notification to the Company of a Cashless Exercise referred to in Section 2(e), the holder of this Warrant shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of this Warrant as required by clause (iii) above or the certificates evidencing such Warrant Shares.

- b. Unless the rights represented by this Warrant shall have expired or shall have been fully exercised, the Company shall, as soon as practicable and in no event later than four (4) Business Days after the Company's receipt of the Exercise Documents and at its own expense, issue a new Warrant identical in all respects to this Warrant exercised except it shall represent rights to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which such Warrant is exercised.
- c. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock issued upon exercise of this Warrant shall be rounded up or down to the nearest whole number.
- d. If within four (4) Business Days of the Company's receipt of the Exercise Documents, the Company shall fail to issue to the holder a certificate for the number of shares of Common Stock to which the holder is entitled upon the holder's exercise of this Warrant pursuant to Section 2(a) or a new Warrant for the number of shares of Common Stock to which such holder is entitled pursuant to Section 2(b) hereof, then the Company shall, in addition to any other remedies under this Warrant or the Securities Purchase Agreement or otherwise available to such holder, pay as additional damages in cash to such holder on each day the issuance of such Common Stock certificate or new Warrant, as the case may be, is not timely effected an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to the holder on a timely basis and to which the holder is entitled and/or, the number of shares represented by the portion of this Warrant which is not being converted, as the case may be, and (B) the average of the Closing Bid Price of the Common Stock for the three consecutive trading days immediately preceding the last possible date which the Company could have issued such Common Stock or Warrant, as the case may be, to the holder without violating this Section 2.

(e) If, despite the Company's obligations under the Registration Rights Agreement, the Warrant Shares to be issued are not registered and available for resale pursuant to a registration statement in accordance with the Registration Rights Agreement, then notwithstanding anything contained herein, the holder of this Warrant may, at its election exercised in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{A \times (B - C)}{B}$$

B

For purposes of the foregoing formula:

A = the total number of shares with respect to which this Warrant is then being exercised.

B = the Closing Bid Price of the Common Stock on the date immediately preceding the date of the Exercise Notice delivered in connection with such exercise.

C = the Warrant Exercise Price then in effect at the time of such exercise.

Section 3. Covenants as to Common Stock. The Company hereby covenants and agrees as follows:

- a. This Warrant is, and any Warrants issued in substitution for or replacement of this Warrant will upon issuance be, duly authorized and validly issued.
- b. All Warrant Shares which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof.
- c. During the period within which the rights represented by this Warrant may be exercised, the Company will at all times have authorized and reserved 100% of the number of shares of Common Stock needed to provide for the exercise of the rights then represented by this Warrant and the par value of said shares will at all times be less than or equal to the applicable Warrant Exercise Price.
- d. The Company shall promptly secure the listing of the shares of Common Stock issuable upon exercise of this Warrant upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance upon exercise of this Warrant) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all shares of Common Stock from time to time issuable upon the exercise of this Warrant; and the Company shall so list on each national securities exchange or automated quotation system, as the case may be, and shall maintain such listing of, any other shares of capital stock of the Company issuable upon the exercise of this Warrant if and so long as any shares of the same class shall be listed on such national securities exchange or automated quotation system.
- e. The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the holder of this Warrant in order to protect the exercise privilege of the holder of this Warrant against dilution or other impairment, consistent with the tenor and purpose of this Warrant. The Company (i) will not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Warrant Exercise Price then in effect, and (ii) will take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.
- f. This Warrant will be binding upon any entity succeeding to the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets.

Section 4. Taxes. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant.

Section 5. Warrant Holder Not Deemed a Stockholder. Except as otherwise specifically provided herein, no holder, as such, of this Warrant shall be entitled to vote or receive dividends or be deemed the holder of shares of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the holder of this Warrant of the Warrant Shares which he or she is then entitled to receive upon the due exercise of this Warrant. In addition,

nothing contained in this Warrant shall be construed as imposing any liabilities on such holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 5, the Company will provide the holder of this Warrant with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

Section 6. Representations of Holder. The holder of this Warrant, by the acceptance hereof, represents that it is acquiring this Warrant and the Warrant Shares for its own account for investment only and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act; provided, however, that by making the representations herein, the holder does not agree to hold this Warrant or any of the Warrant Shares for any minimum or other specific term and reserves the right to dispose of this Warrant and the Warrant Shares at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. The holder of this Warrant further represents, by acceptance hereof, that, as of this date, such holder is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act (an "**Accredited Investor**"). Upon exercise of this Warrant, the holder shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the Warrant Shares so purchased are being acquired solely for the holder's own account and not as a nominee for any other party, for investment, and not with a view toward distribution or resale and that such holder is an Accredited Investor. If such holder cannot make such representations because they would be factually incorrect, it shall be a condition to such holder's exercise of this Warrant that the Company receive such other representations as the Company considers reasonably necessary to assure the Company that the issuance of its securities upon exercise of this Warrant shall not violate any United States or state securities laws.

Section 7. Ownership and Transfer.

(a) The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holder hereof), a register for this Warrant, in which the Company shall record the name and address of the person in whose name this Warrant has been issued, as well as the name and address of each transferee. The Company may treat the person in whose name any Warrant is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any transfers made in accordance with the terms of this Warrant.

(b) This Warrant and the rights granted to the holder hereof are transferable, in whole or in part, upon surrender of this Warrant, together with a properly executed warrant power in the form of Exhibit B attached hereto; provided, however, that any transfer or assignment shall be subject to the conditions set forth in Section 7(c) below.

(c) The holder of this Warrant understands that this Warrant has not been and is not expected to be, registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (a) subsequently registered thereunder, or (b) such holder shall have delivered to the Company an opinion of counsel, in generally acceptable form, to the effect that the securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration; provided that (i) any sale of such securities made in reliance on Rule 144 promulgated under the Securities Act may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any resale of such securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder; and (ii) neither the Company nor any other person is under any obligation to register the Warrants under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(d) Company is obligated to register the Warrant Shares for resale under the Securities Purchase Act pursuant to the Registration Rights Agreement and the initial holder of this Warrant (and certain assignees thereof) is entitled to the registration rights in respect of the Warrant Shares as set forth in the Registration Rights Agreement.

Section 8. Adjustment of Warrant Exercise Price and Number of Shares. The Warrant Exercise Price and the number of shares of Common Stock issuable upon exercise of this Warrant shall be adjusted from time to time as follows:

(a) Adjustment of Warrant Exercise Price and Number of Shares upon Issuance of Common Stock. If and whenever on or after the date of issuance of this Warrant, the Company issues or sells, or in accordance with Section 8(b) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with an Approved Stock Plan or Excluded Securities or upon exercise or conversion of the Other Securities) for a consideration per share less than a price (the "**Applicable Price**") equal to the average of the Closing Bid Price of the Common Stock on the five consecutive trading days immediately preceding such issue or sale, then immediately after such issue or sale the Warrant Exercise Price then in effect shall be reduced to an amount equal to the product of (x) the Warrant Exercise Price in effect immediately prior to such issue or sale and (y) the quotient determined by dividing (1) the sum of (I) the product derived by multiplying the Applicable Price by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (II) the consideration, if any, received by the Company upon such issue or sale, by (2) the product derived by multiplying the (I) Applicable Price by (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of this Section 8(a), the following shall be applicable:

i. (i) Issuance of Options. If the Company in any manner grants any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any Convertible Securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the "lowest price per share for which one share of Common Stock is issuable upon exercise of such Options or upon conversion or exchange of such Convertible Securities" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Warrant Exercise Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(i) to the extent that such adjustment is based solely on the fact that the Convertible Securities issuable upon exercise of such Option are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

i. (ii) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 8(a)(ii), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion or exchange of such Convertible Security. No further adjustment of the Warrant Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Warrant Exercise Price had been or are to be made pursuant to other provisions of this Section 8(a), no further adjustment of the Warrant Exercise Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(ii) to the extent that such adjustment is based solely on the fact that such Convertible Securities are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

i. (iii) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Warrant Exercise Price in effect at the time of such change shall be adjusted to the Warrant Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold and the number of shares of Common Stock acquirable hereunder shall be correspondingly readjusted. For purposes of this Section 8(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the date of issuance of this Warrant are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Warrant Exercise Price then in effect.

i. (iv) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the average of the Closing Bid Price of such securities for the twenty (20) consecutive trading days immediately preceding the date of receipt. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five Business Days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. The determination of such appraiser shall be final and binding upon all parties and the fees and expenses of such appraiser shall be borne by the Company.

i. (v) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (2) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(b) Adjustment of Warrant Exercise Price upon Subdivision or Combination of Common Stock. If the Company at any time after the date of issuance of this Warrant subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Warrant Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately increased. If the Company at any time after the date of

issuance of this Warrant combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Warrant Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately decreased.

(c) Distribution of Assets. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement or other transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case:

i. (i) the Warrant Exercise Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution shall be reduced, effective as of the close of business on such record date, to a price determined by multiplying such Warrant Exercise Price by a fraction of which (A) the numerator shall be the Closing Bid Price on the trading day immediately preceding such record date minus the value of the Distribution (as determined in good faith by the Company's Board of Directors) applicable to one share of Common Stock, and (B) the denominator shall be the Closing Bid Price on the trading day immediately preceding such record date; and

i. (ii) either (A) the number of Warrant Shares obtainable upon exercise of this Warrant shall be increased to a number of shares equal to the number of shares of Common Stock obtainable immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution multiplied by the reciprocal of the fraction set forth in the immediately preceding clause (i), or (B) in the event that the Distribution is of common stock of a company whose common stock is traded on a national securities exchange or a national automated quotation system, then the holder of this Warrant shall receive an additional warrant to purchase Common Stock, the terms of which shall be identical to those of this Warrant, except that such warrant shall be exercisable into the amount of the assets that would have been payable to the holder of this Warrant pursuant to the Distribution had the holder exercised this Warrant immediately prior to such record date and with an exercise price equal to the amount by which the exercise price of this Warrant was decreased with respect to the Distribution pursuant to the terms of the immediately preceding clause (i).

(d) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Warrant Exercise Price and the number of shares of Common Stock obtainable upon exercise of this Warrant so as to protect the rights of the holder of this Warrant; provided that no such adjustment will increase the Warrant Exercise Price or decrease the number of shares of Common Stock obtainable as otherwise determined pursuant to this Section 8.

(e) Notices.

i. Immediately upon any adjustment of the Warrant Exercise Price, the Company will give written notice thereof to the holder of this Warrant, setting forth in reasonable detail, and certifying, the calculation of such adjustment.

(ii) The Company will give written notice to the holder of this Warrant at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Organic Change (as defined below), dissolution or liquidation, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to such holder.

(iii) The Company will also give written notice to the holder of this Warrant at least twenty (20) days prior to the date on which any Organic Change, dissolution or liquidation will take place, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to such holder.

Section 9. Exercise at the Company's Election.

(a) Exercise Right. At any time or times on or after the date which is one year after the Warrant Date, the Company shall have the right, in its sole discretion, to require that this Warrant be exercised for up to all of the Warrant Shares subject to this Warrant ("**Exercise at Company's Election**") at the Warrant Exercise Price then in effect; provided that the Conditions to Exercise at the Company's Election (as set forth below) are satisfied as of the Company's Election Exercise Date (as defined below).

(b) Method of Conversion. The Company shall exercise its right to Exercise at Company's Election by providing the holder of this Warrant written notice ("**Notice of Exercise at Company's Election**") at least five (5) Business Days prior to the date selected by the Company for exercise ("**Company's Election Exercise Date**"). The Company shall exercise a pro rata amount from each holder of Note Warrants based on the number of Warrant Shares subject to Note Warrants held by such holder relative to the number of Warrant Shares outstanding on the date of the Company's delivery of the Notice of Exercise at Company's Election.

The Notice of Exercise at Company's Election shall indicate (x) the number of Warrant Shares the Company has selected for exercise, (y) the Company's Election Exercise Date, which date shall be not less than five (5) or more than ten (10) Business Days after each holder's receipt of such notice, and (z) each holder's pro rata share of outstanding Warrant Shares. All Warrant Shares selected for exercise in accordance with the provision of this Section 9 with respect to which this Warrant has not been exercised shall be exercised, subject to the satisfaction of the conditions of this Section 9, as of the Company's Election Exercise Date in accordance with Section 2 as if the holders of the Note Warrants had given the Exercise Notice on the Company's Election Exercise Date. All holders of Note Warrants shall thereupon and within two (2) Business Days after the Company's Election Exercise Date surrender the Note Warrants to the Company.

(c) "**Conditions to Exercise at the Company's Election**" means the following conditions:

(i) on each day during the period beginning 20 days prior to the Notice of Exercise at the Company's Election and ending on and including the Company's Election Exercise Date, the Registration Statement shall be effective and available for the sale of no less than the sum of:

(A) the number of Conversion Shares then issuable upon the conversion of all outstanding Notes (without regard to any limitations on conversion),

(B) the number of Warrant Shares then issuable upon exercise of all outstanding Note Warrants (without respect to any limitations on exercise), including the Warrant Shares to be issued pursuant to this Exercise at Company's Election and

(C) the number of Conversion Shares and Warrant Shares that are then held by the holders of the Note Warrants;

(ii) on each day during the period beginning 20 days prior to the date of the Company's Notice of Exercise at Company's Election and ending on and including the Company's Election Exercise Date, the Common Stock is designated for quotation on the Nasdaq National Market or listed on The New York Stock Exchange, Inc. or The American Stock Exchange, Inc. and is not suspended from trading;

(iii) on each day during the 15 consecutive trading days ending on and including the date of the Company's Notice of Exercise at the Company's Election, the Closing Bid Price of the Common Stock is at least 200% of the quotient of (A) the Conversion Price (as defined in the Series [A / B] Notes) then in effect (or if no Series [A / B] Notes are outstanding, then the Conversion Price of the Series [A / B] Notes as if such Series [A / B] Notes were then outstanding), divided by (B) 1.175;

(iv) if required by Section 4(l) of the Securities Purchase Agreement, the Company's stockholders shall have approved the issuance of the Securities (pursuant to Section 4(l) of the Securities Purchase Agreement) on or prior to the date of the Company's Notice of Exercise at Company's Election;

(v) during the period beginning on the Warrant Date and ending on and including the Company's Election Date, the Company shall have delivered Conversion Shares upon conversion of the Notes and Warrant Shares upon exercise of the Note Warrants to the Buyers on a timely basis as set forth in Section 2(d)(ii) of Notes and Sections 2(a) and 2(b) of the Note Warrants, respectively; and

(vi) the Company otherwise has satisfied its obligations and is not in default under the Notes, the Securities Purchase Agreement, the Note Warrants and the Registration Rights Agreement.

(d) Notwithstanding the above, the holder of this Warrant may exercise this Warrant (including Warrant Shares selected for exercise) into Common Stock pursuant to Section 2(a) on or prior to the date immediately preceding the Company's Election Exercise Date (and, after such holder's receipt of the Notice of Exercise at Company's Election, without regard to the conversion limitations set forth herein).

Section 10. Purchase Rights; Reorganization; Reclassification, Consolidation, Merger or Sale.

(a) In addition to any adjustments pursuant to Section 8 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then the holder of this Warrant will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to another Person or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "**Organic Change.**" Prior to the consummation of any (i) sale of all or substantially all of the Company's assets to an acquiring Person or (ii) other Organic Change following which the Company is not a surviving entity, the Company will secure from the Person purchasing such assets or the successor resulting from such Organic Change (in each case, the "**Acquiring Entity**") written agreement (in form and substance satisfactory to the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding) to deliver to each holder of Warrants in exchange for such Warrants, a security of the Acquiring Entity evidenced by a written instrument substantially similar in form and substance to this Warrant and satisfactory to the holders of the Warrants (including, an adjusted warrant exercise price equal to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and exercisable for a corresponding number of shares of Common Stock acquirable and receivable upon exercise of the Warrants, if the value so reflected is less than the Warrant Exercise Price in effect immediately prior to such consolidation, merger or sale). Prior to the consummation of any other Organic Change, the Company shall make appropriate provision (in form and substance satisfactory to the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding) to insure that each of the holders of the Warrants will thereafter have the right to acquire and receive in lieu of or in addition to (as the case may be) the shares of Common Stock immediately theretofore acquirable and receivable upon the exercise of such holder's Warrants, such shares of stock, securities or assets that would have been issued or payable in such Organic Change with respect to or in exchange for the number of shares of Common Stock which would have been acquirable and receivable upon the exercise of such holder's Warrant as of the date of such Organic Change (without taking into account any limitations or restrictions on the exercisability of this Warrant).

Section 11. Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company shall, on receipt of an indemnification undertaking, issue a new Warrant of like denomination and tenor as this Warrant so lost, stolen, mutilated or destroyed.

Section 12. Notice. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Warrant must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

8x8, Inc.

2445 Mission College Blvd.

Santa Clara, California 95054

Telephone: (408) 727-1885

Facsimile: (408) 933-0234

Attention: Chief Executive Officer

With copy to:

Wilson Sonsini Goodrich & Rosati, Professional
Corporation

650 Page Mill Road

Palo Alto, California 94304-1050

Telephone: 650-493-9300

Facsimile: 650-493-6811

Attention: John T. Sheridan, Esq.

If to a holder of this Warrant, to it at the address and facsimile number set forth on the Schedule of Investors to the Securities Purchase Agreement, with copies to such holder's representatives as set forth on such Schedule of Investors, or at such other address and facsimile as shall be delivered to the Company upon the issuance or transfer of this Warrant. Each party shall provide five days' prior written notice to the other party of any change in address or facsimile number. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

Section 13. **Amendments.** This Warrant and any term hereof may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party or holder hereof against which enforcement of such change, waiver, discharge or termination is sought.

Section 14. **Date.** The date of this Warrant is December ____, 1999 (the "**Warrant Date**"). This Warrant, in all events, shall be wholly void and of no effect after the close of business on the Expiration Date, except that notwithstanding any other provisions hereof, the provisions of Section 7 shall continue in full force and effect after such date as to any Warrant Shares or other securities issued upon the exercise of this Warrant.

Section 15. Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrants may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding; provided that no such action may increase the Warrant Exercise Price of the Warrants or decrease the number of shares or class of stock obtainable upon exercise of any Warrants without the written consent of the holder of such Warrant.

Section 16. Descriptive Headings; Governing Law. The descriptive headings of the several sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

Section 17. Rule 144A Information Requirement. Within the period prior to the expiration of the holding period applicable to sales hereof under Rule 144(k) under the 1933 Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to the Holder and the holder of any Common Stock issued upon exercise of this Warrant which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of this Warrant from the Holder, the information required pursuant to Rule 144A(d)(4) under the 1933 Act upon the request of the Holder and it will take such further action as the Holder may reasonably request, all to the extent required from time to time to enable the Holder to sell this Warrant without registration under the 1933 Act within the limitation of the exemption provided by Rule 144A, as Rule 144A may be amended from time to time. Upon the request of the Holder, the Company will deliver to the Holder a written statement as to whether it has complied with such requirements.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by _____, its _____, as of the ____ day of _____, _____.

8X8, INC.

By_

Name:

Title:

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REGISTRATION
RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of December 15, 1999, is made by and among 8x8, Inc., a Delaware corporation with headquarters located at 2445 Mission College Blvd., Santa Clara, California 95054 (the "Company"), and the undersigned Buyers (individually a "Buyer" and collectively the "Buyers").

WHEREAS:

A. In connection with the Securities Purchase Agreement by and among the parties hereto of even date herewith (the "Securities Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to the Buyers (i) Series A Convertible Notes (the "Series A Notes"), and Series B Convertible Notes (the "Series B Notes" and collectively with the Series A Notes, the "Notes"), which will be convertible into shares (as converted, the "Conversion Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), in accordance with the terms of the Notes and (ii) warrants to purchase shares of Common Stock (the "Warrants" and, as exercised, the "Warrant Shares").

B. To induce the Buyers to execute and deliver the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "1933 Act"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Buyers hereby agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following meanings:

a. "Investor" means a Buyer and any transferee or assignee thereof about whom the Buyer provides notice to the Company in accordance with Section 9 and to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

b. "Person" means a corporation, a limited liability company, an association, a partnership, an organization, a business, an individual, a governmental or political subdivision thereof or a governmental agency.

c. "Register," "registered," and "registration" refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415 under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis ("**Rule 415**"), and the declaration or ordering of effectiveness of such Registration Statement(s) by the United States Securities and Exchange Commission (the "**SEC**").

d. "Registrable Securities" means (i) the Conversion Shares issued or issuable upon conversion of the Notes, (ii) the Warrant Shares issued or issuable upon exercise of the Warrants, (iii) the Interest Shares (as defined in Section 2(c)(ii) of the Notes) issuable upon conversion of the Additional Amount and (iv) any shares of capital stock issued or issuable with respect to the Conversion Shares, the Notes, the Warrant Shares, the Warrants or the Interest Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversions of the Notes or exercises of Warrants.

e. "Registration Statement" means a registration statement or registration statements of the Company filed under the 1933 Act covering the Registrable Securities.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement.

2. REGISTRATION.

a. Mandatory Registration. The Company shall prepare, and, as soon as practicable, but in no event later than the first Business Day after the date which is 95 days after the Closing Date (as defined in the Securities Purchase Agreement) (the "**Filing Deadline**") file with the SEC a Registration Statement or Registration Statements (as necessary) on Form S-3 covering the resale of the number of Registrable Securities as provided for in this Section 2(a). In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration, subject to the provisions of Section 2(d). Any first Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the sum of (y) the product of (i) 1.15 and (ii) the number of Conversion Shares issuable upon conversion of the Notes (without regard to any limitations on conversions) as of the date immediately preceding the date the Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f), plus (z) the number of Warrant Shares issuable upon exercise of the Warrants (without regard to any limitations on exercise) as of the date immediately preceding the date the Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). The Company shall use its best efforts to cause such Registration Statement to be declared effective by the SEC as soon as practicable, but in no event later than the date which is 150 days after the Closing Date (the "**Effectiveness Deadline**"); provided, however, if the SEC reviews the S-3, the Effectiveness Deadline shall be the date which is 180 days after the Closing Date.

b. Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and each increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Person's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors.

c. Legal Counsel. Subject to Section 5 hereof, the Buyers holding a majority of the Registrable Securities shall have the right to select one legal counsel to review and oversee any offering pursuant to this Section 2 ("**Legal Counsel**"), which shall be Katten Muchin & Zavis or such other counsel as thereafter designated by the holders of a majority of Registrable Securities. The Company shall reasonably cooperate

with Legal Counsel in performing the Company's obligations under this Agreement.

d. Ineligibility for Form S-3. In the event that Form S-3 is not available for any registration of Registrable Securities hereunder, the Company shall (i) register the sale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

e. Effect of Failure to Obtain and Maintain Effectiveness of Registration Statement.

(i) Failure to Obtain Effectiveness.

If a Registration Statement covering all the applicable Registrable Securities and required to be filed by the Company pursuant to this Agreement is not declared effective by the SEC on or before the Effectiveness Deadline then, as partial relief for the damages to any holder (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of the Notes an amount in cash equal to the sum of the following:

(A) Delay in Effectiveness from the Effectiveness

Deadline Until 30 days Thereafter. The product of (i) The aggregate principal amount of Notes held by such holder of Notes multiplied by (ii) the product of (I) 0.000333 for any day during the period beginning on the Effectiveness Deadline and ending on and including the date which is 30 days after the Effectiveness Deadline and (II) the number of days after the Effectiveness Deadline that a Registration Statement is not declared effective by the SEC; plus

(B) Delay in Effectiveness from the 31st

Day after the Effectiveness Deadline and Thereafter. The product of (i) The aggregate principal amount of Notes held by such holder of Notes multiplied by (ii) the product of (I) 0.005 for any day commencing on the 31st day after the Effectiveness Deadline and thereafter multiplied by (II) the number of days after the 31st day after the Effectiveness Deadline that a Registration Statement is not declared effective by the SEC.

(ii) Failure to Maintain Effectiveness. If on any day after a Registration Statement has been declared effective by the SEC (including days during a Grace Period), sales of all the Registrable Securities required to be included on such Registration Statement cannot be made pursuant to such Registration Statement for any reason (including, without limitation, because of a failure to keep the Registration Statement effective, to disclose such information as is necessary for sales to be made pursuant to such Registration Statement or to have registered a sufficient number of shares of Common Stock) for a period of more than five (5) consecutive trading days or more than ten (10) trading days in a 365-day period (including days during a Grace Period), then, as partial relief for the damages to any holder (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of the Notes an amount in cash equal to: (A) the product of (i) the aggregate principal amount of Notes held by such holder of Notes and (ii) the product of (I) 0.0025 and (II) the number of days after effectiveness of a Registration Statement that it has lapsed or is unavailable (as described above) in excess of a five (5) consecutive trading day period or in excess of ten (10) trading days in any 365-day period.

(iii) Date of Payment. The payments to which a holder shall be entitled pursuant to this Section 2(e) are referred to herein as "Registration Delay Payments." Registration Delay Payments shall be paid on the earlier of (I) the

last day of the calendar month during which such Registration Delay Payments are incurred and (II) the third business day after the event or failure giving rise to the Registration Delayed Payments is cured.

f. Sufficient Number of Shares Registered.

In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a) is insufficient to cover all of the Registrable Securities or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(b), the Company shall amend the Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least 115% of the Registrable Securities, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of Registrable Securities issued or issuable upon conversion of the Notes and exercise of the Warrants is greater than the number of shares of Common Stock available for resale under such Registration Statement. For purposes of the calculation set forth in the foregoing sentence, any restrictions on the convertibility of the Notes or exercise of the Warrants shall be disregarded and such calculation shall assume that the Notes are then convertible into, and the Warrants are then exercisable, for shares of Common Stock at the then prevailing Conversion Rate (as defined in the Notes) or Warrant Exercise Price (as defined in the Warrants), respectively, if applicable.

3. RELATED OBLIGATIONS.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a) or 2(f), the Company will use its best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

a. The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities (but in no event later than the Filing Deadline) and use its best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as possible after such filing (but in no event later than the Effectiveness Deadline) and keep such Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities without restriction pursuant to Rule 144(k) promulgated under the 1933 Act (or successor thereto) or (ii) the date on which (A) the Investors shall have sold all the Registrable Securities and (B) none of the Notes or Warrants is outstanding (the "**Registration Period**"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The term "best efforts" as used in the first sentence of this Section 3(a) shall mean, among other things, that the Company shall submit to the SEC, within two business days after the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on the Registration Statement, as the case may be, a request for acceleration of effectiveness of such Registration Statement to a time and date not later than 48 hours after the submission of such request.

b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q or Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall file such amendments or supplements with the SEC on the same day on which the 1934

Act report is filed which created the requirement for the Company to amend or supplement the Registration Statement.

c. The Company shall (a) permit Legal Counsel to review and comment upon a Registration Statement and all amendments and supplements thereto at least seven (7) days prior to their filing with the SEC and (b) not file any document in a form to which Legal Counsel reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Legal Counsel, without charge, (i) any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Legal Counsel in performing the Company's obligations pursuant to this Section 3.

d. The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, and all exhibits, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

e. The Company shall use reasonable efforts to (i) register and qualify the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of such jurisdictions in the United States as legal Counsel or any Investor reasonably requests, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

f. As promptly as practicable after becoming aware of such event or development, the Company shall notify Legal Counsel and each Investor in writing of the happening of any event as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (provided that such notice shall not contain any material, nonpublic information), and promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten (10) copies of such supplement or amendment to Legal Counsel and each Investor (or such other number of copies as Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by facsimile on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

g. The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the

Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel and each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

h. At the reasonable request of any Buyer and at such Buyer's expense, the Company shall furnish to such Buyer, on the date of the effectiveness of the Registration Statement and thereafter from time to time upon any change or addition (including by way of incorporation by reference) to the financial statements or financial information included in the Registration Statement (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to such Buyer and the Company, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to such Buyer.

i. The Company shall make available for inspection by (i) any Investor, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "Inspectors") all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request, provided, however, that each Inspector shall hold in strict confidence and shall not make any disclosure (except to an Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement of which the Inspector has knowledge. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential.

j. The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

k. The Company shall use its best efforts either to (i) cause all the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all the Registrable Securities covered by the Registration Statement on The Nasdaq SmallCap Market, the Nasdaq National Market The American Stock Exchange, Inc., or The New York Stock Exchange, Inc. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(k).

l. The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

m. The Company shall provide a transfer agent and registrar of all such Registrable Securities not later than the effective date of such Registration Statement.

n. If requested by an Investor, the Company shall (i) immediately incorporate in a prospectus supplement or post-effective amendment such information as an Investor requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities; (ii) make all required filings of such prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if requested by an Investor of such Registrable Securities.

o. The Company shall use its best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

p. The Company shall make generally available to its security holders as soon as practical, but not later than 90 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement.

q. The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

r. Within two (2) business days after a Registration Statement which includes the Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

s. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of Registrable Securities pursuant to a Registration Statement.

t. Notwithstanding anything to the contrary in Section 3(f), at any time after the applicable Registration Statement has been declared effective by the SEC, the Company may delay the disclosure of material non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "Grace Period"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Periods shall exceed 15 consecutive days and during any consecutive 365 day period, such Grace Periods shall not exceed an aggregate of 30 days (an "Allowable Grace Period"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the holders receive the notice referred to in clause (i) and shall end on and include the later of the date the holders receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(f) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material non-public information is no longer applicable.

a. At least seven (7) days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

b. Each Investor by such Investor's acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

c. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(g) or the first sentence of 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(f) or the first sentence of 3(h) and for which the Investor has not yet settled.

5. EXPENSES OF REGISTRATION.

All reasonable expenses, other than underwriting discounts and brokerage commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees shall be paid by the Company. In addition, the Company shall reimburse the Investors for the reasonable fees and disbursements of Legal Counsel in connection with registrations, filings or qualifications pursuant to Sections 2 and 3 of this Agreement (other than Section 3(h)) which amount combined with expenses incurred by the Buyers pursuant to Section 4(j) of the Securities Purchase Agreement shall not exceed \$50,000.

6. INDEMNIFICATION.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "Indemnified Person"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, attorneys' fees, amounts paid in settlement or expenses, joint or several, (collectively, "Claims") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("Indemnified Damages"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the

qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any material violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or disbursements or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); (ii) shall not be available to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the prospectus made available by the Company, if such prospectus was timely made available by the Company pursuant to Section 3(d); and (iii) shall not apply to amounts paid in settlement of any Claim, if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

b. In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally, and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(d), such Investor will reimburse any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

c. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the

indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

d. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

e. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. CONTRIBUTION.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. REPORTS UNDER THE 1934 ACT.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("Rule 144"), the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit the Company's obligations under Section 4(c) of the Securities Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of

the 1934 Act or, if applicable, that there is publicly available the information concerning the Company described in Rule 144(C)(2), (ii) unless available on the EDGAR system, a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the investors to sell such securities pursuant to Rule 144 without registration.

9. ASSIGNMENT OF REGISTRATION RIGHTS.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act and applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

10. AMENDMENT OF REGISTRATION RIGHTS.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and Investors who then hold two-thirds (2/3) of the Registrable Securities. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

11. MISCELLANEOUS.

a. A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

b. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one business day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

8x8, Inc.

2445 Mission College Blvd.

Santa Clara, California 95054

Telephone: (408) 727-1885

Facsimile: (408) 933-0234

Attention: Chief Executive Officer

With a copy to:

Wilson Sonsini Goodrich & Rosati,
Professional Corporation

650 Page Mill Road

Palo Alto, California 94304-1050

Telephone: 650-493-9300

Facsimile: 650-493-6811

Attention: John T. Sheriden, Esq.

If to Legal Counsel:

Katten Muchin & Zavis

525 West Monroe Street, Suite 1600

Chicago, Illinois 60661-3693

Telephone: 312-902-5200

Facsimile: 312-902-1061

Attention: Robert J. Brantman, Esq.

If to a Buyer, to its address and facsimile number on the Schedule of Buyers attached hereto, with copies to such Buyer's representatives as set forth on the Schedule of Buyers or to such other address and/or facsimile number and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in Cook County in the City of Chicago, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally, subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection herewith or arising out of this Agreement or any transaction contemplated hereby.

e. This Agreement, the Securities Purchase Agreement, the Warrants and the Notes the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Securities Purchase Agreement, the Warrants and the Notes supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. All consents and other determinations to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by Investors holding a majority of the Registrable Securities, determined as if all of the Notes and the Warrants then outstanding have been converted into or exercised for Registrable Securities without regard to any limitation on conversions of the Notes or exercises of the Warrants.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

l. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be duly executed as of day and year first above written.

Investor's Name	Investor Address and Facsimile Number	Purchase Price	Principal Amount of Series A Notes	Principal Amount of Series B Notes	Investor's Legal Representatives' Address and Facsimile Number
Fisher Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel J. Hopkins Facsimile: (312) 338-0780 Telephone: (312) 696-2100 Residence: Illinois	\$4,650,000	\$2,325,000	\$2,325,000	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
Wingate Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel J. Hopkins Facsimile: (312) 338-0780 Telephone: (312) 696-2100 Residence: Illinois	\$2,850,000	\$1,425,000	\$1,425,000	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200

SCHEDULE OF BUYERS

COMPANY:
8x8, INC.
 By: _____
 Name:
 Title:

BUYER:
FISHER CAPITAL LTD.
 By: _____
 Name: Daniel J. Hopkins
 Its: Authorized Signatory
WINGATE CAPITAL LTD.
 By: _____
 Name: Daniel J. Hopkins

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THIS WARRANT AND THE SECURITIES WHICH MAY BE PURCHASED UPON THE EXERCISE OF THIS WARRANT HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE SECURITIES LAWS.

WARRANT TO PURCHASE COMMON STOCK

of

8x8, INC.

Void December 16, 2002

THIS CERTIFIES THAT, for value received, FleetBoston Robertson Stephens Inc. (the "Holder") is entitled, subject to the terms set forth below, to purchase from 8x8, Inc., a Delaware corporation (the "Company"), the number of shares of the Company's Common Stock (the "Shares") equal to ten percent (10%) of \$3,750,000 divided by the Conversion Price (as defined below), at the Conversion Price (the "Exercise Price"). The number, character and Exercise Price of the Shares are subject to adjustment as provided below. The term "Warrant" as used herein shall include this Warrant and any warrants delivered in substitution or exchange therefor as provided herein. "Conversion Price" means the product of (A) 117.5% and (B) the Market Price (as defined below) of the Common Stock on the date which is 36 trading days from the date hereof, provided that the Conversion Price shall not exceed \$7.05 (subject to adjustment for stock dividends, stock splits, stock combinations or other similar transactions (each, a "Recapitalization")) nor be less than \$4.00 (subject to any Recapitalizations with respect to such shares). "Market Price" shall mean, with respect to any security, that price which shall be computed as the arithmetic average of the closing bid prices for such security during the five (5) consecutive trading days immediately preceding such date of determination. All such determinations shall be appropriately adjusted for any Recapitalizations with respect to such shares.

1. Term of Warrant.

- a. Term of Warrant. Except as otherwise provided herein, this Warrant shall be exercisable, in whole or in part, during the term commencing on the date which is 36 trading days from the date hereof and ending at 5:00 p.m., Pacific Standard Time, on December 16, 2002, and shall be void thereafter.

2. Exercise Of Warrants.

- a. Cash Exercise. The purchase rights set forth in this Warrant are exercisable by the Holder, in whole or in part, at any time, or from time to time commencing on the date which is 36 trading days from the date hereof, prior to the expiration of the term set forth in Section 1 above, by the tender to the Company at its principal office of a notice of exercise in the form attached hereto as Exhibit A (the "Notice of Exercise"), duly completed and executed on behalf of the Holder and the payment to the Company by certified, cashier's or other check acceptable to the Company or by wire transfer of immediately available funds to such account as may be designated by the Company, of the aggregate purchase price of the Shares being purchased.
- b. Net Issue Exercise. Notwithstanding the payment provisions set forth in Section 2(a) above, if the Shares to be issued upon exercise of this Warrant are not registered and available for resale pursuant to a registration statement in accordance with the Registration Rights Agreement between the Company and the Holder, dated December 1, 1999 the Holder may elect to receive Shares equal to the value of this Warrant (or of any portion thereof remaining unexercised) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise and notice of such election, in which event the Company shall issue to the Holder that number of Shares computed using the following formula:

$$X = Y(A-B)$$

A

Where:

X = the number of Shares to be issued to the Holder;

Y = the number of Shares purchasable under this Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being cancelled (at the date of such calculation);

A = the fair market value of one share of the Shares (at the date of such calculation); and

B = the Exercise Price (as adjusted to the date of such calculation).

For purposes of the calculation above, the fair market value per share shall be the product of (i) the average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary or the last reported sale price of the Common Stock or the closing price quoted on the Nasdaq National Market or on any exchange on which the Common Stock is listed, whichever is applicable, as published in the Wall Street Journal for the five (5) trading days prior to the date of determination of fair market value and (ii) the number of Shares for which this Warrant is exercisable.

- c. Stock Certificates. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its tender for exercise as provided above, and the persons entitled to receive the Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such Shares as of the close of business on such date. As promptly as practicable on or after such date and in any event within ten (10) days thereafter, the Company, at its expense, shall deliver to the person or persons entitled to receive the same a certificate or certificates for that number of shares issuable upon such exercise. In the event that this Warrant is exercised in part, the Company shall, at its expense, execute and deliver a new Warrant with the same terms and conditions for the number of Shares that remain subject to this Warrant.
 - d. Taxes. The issuance of the Shares upon the exercise of this Warrant, and the delivery of certificates or other instruments representing such Shares, shall be made without charge to the Holder for any tax or other charge in respect of such issuance. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any certificate in a name other than that of the Holder and the Company shall not be required to issue or deliver any such certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.
3. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. In lieu of such fractional share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.
 4. No Rights As Stockholders. This Warrant does not entitle the Holder to any voting right or other rights as a stockholder of the Company prior to the exercise of the Holder's rights to purchase the Shares as provided for herein.
 5. Transfer of Warrants.
 - a. Warrant Register. The Company shall maintain a register (the "Warrant Register") containing the names and addresses of the Holder or Holders. Any Holder of this Warrant or any portion thereof may change its address as shown on the Warrant Register by written notice to the Company, requesting such change. Any notice or written communication required or permitted to be given to the Holder may be delivered or given by mail to such Holder as shown on the Warrant Register and at the address shown on the Warrant Register. Until this Warrant is transferred on the Warrant Register, the Company may treat the Holder as shown on the Warrant Register as the absolute owner of this Warrant for all purposes, notwithstanding any notice to the contrary.
 - b. Transferability and Non-negotiability of Warrant. This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable federal and state securities laws by the transferor and the transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, if such are requested by the Company), provided, however, that this Warrant may be assigned by the Holder to any person or entity affiliated with or established by the Holder. Subject to the provisions of this Warrant with respect to compliance with the Securities Act of 1933, as amended (the "Act"), title to this Warrant may be transferred by endorsement (by the Holder executing the assignment form (the "Assignment Form") attached hereto as Exhibit B) and delivery in the same manner as a negotiable instrument transferable by endorsement and delivery.
 - c. Exchange of Warrant Upon a Transfer. On surrender of this Warrant for exchange, properly endorsed on the Assignment Form and subject to the provisions of this Warrant with respect to compliance with the Act and with the limitations on assignments and transfers contained in this Section 5, the Company, at its expense, shall issue to or on the order of the Holder a new warrant or warrants with the same terms and conditions, in the name of the Holder or as the Holder (on payment by the Holder of any applicable transfer taxes) may direct, for the number of shares issuable upon exercise thereof.
 - d. Compliance with Securities Laws.
 - i. The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Shares to be issued upon exercise hereof are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder will not offer, sell or otherwise dispose of this Warrant or any Shares to be issued upon exercised hereof except under circumstances that will not result in a violation of the Act or any state securities laws. Upon exercise of this Warrant, the Holder shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the Shares so purchased are being acquired solely for the Holder's own account and not as a nominee for any other party, for investment, and not with a view toward distribution or resale; provided, however, that the Holder shall be able to transfer such Warrant or Shares (x) as provided in subparagraph (b) above and (y) in such other transactions as may be effected without registration pursuant to the Act or qualification pursuant to any relevant state securities laws and shall confirm such other matters related thereto as may be reasonably requested by the Company.
 - ii. This Warrant and all Shares issued upon exercise hereof or conversion thereof shall be stamped or imprinted with a legend in substantially the

THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SECURITIES AND RESTRICTING THEIR TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

6. Representations and Warranties by the Holder. The Holder represents and warrants to the Company as follows:

- a. Investment Purpose. The right to Shares issuable upon exercise of the Holder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, except as provided in Section 5 of this Agreement or pursuant to an effective registration statement under the Act, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption from the Act.
- b. Private Issue. The Holder understands (i) that the Shares issuable upon exercise of the Holder's rights contained herein is not registered under the Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 6.
- c. Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.
- d. Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "**Exchange Act**"), or file reports pursuant to Section 15(d) of the Exchange Act, or if a registration statement covering the securities under the Act is not in effect when it desires to sell (i) the rights to purchase the Shares pursuant to this Warrant or (ii) the Shares issuable upon exercise of this Warrant, it may be required to hold such securities for an indefinite period. The Holder is aware of the provisions of Rule 144 promulgated under the Act.

7. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Shares upon the exercise of this Warrant and, from time to time, will take all steps necessary to amend its Certificate of Incorporation (the "**Certificate**") to provide sufficient reserves of shares of Common Stock issuable upon exercise of the Warrant. The Company further covenants that all shares that may be issued upon the exercise of rights represented by this Warrant and payment of the Exercise Price, all as set forth herein, will be free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously or otherwise specified herein). The Company agrees that its issuance of this Warrant shall constitute full authority of its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Shares upon the exercise of this Warrant.

8. Adjustment Rights.

The Exercise Price and the number of shares purchasable hereunder are subject to adjustment from time to time, as follows:

- a. Adjustment of Warrant Exercise Price and Number of Shares upon Issuance of Common Stock. If and whenever on or after the date of issuance of this Warrant, the Company issues or sells any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with an employee benefit plan which has been approved by the Board of Directors of the Company or Excluded Securities (as defined below) or upon exercise or conversion of the Other Securities) for a consideration per share less than a price (the "**Applicable Price**") equal to the average of the Closing Bid Price of the Common Stock on the five (5) consecutive trading days immediately preceding such issue or sale, then immediately after such issue or sale the Exercise Price then in effect shall be reduced to an amount equal to the product of (x) the Exercise Price in effect immediately prior to such issue or sale and (y) the quotient determined by dividing (1) the sum of (I) the product derived by multiplying the Applicable Price by the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale, plus (II) the consideration, if any, received by the Company upon such issue or sale, by (2) the product derived by multiplying the (I) Applicable Price by (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of this Section 8, "**Excluded Securities**" shall mean any of the following (a) any issuance by the Company of securities in connection with a strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (b) shares of Common Stock issued by the Company in a firm commitment, underwritten public offering, (c) any issuance by the Company of securities as consideration for a merger or consolidation or the acquisition of a business, product, license or other assets of another person or entity and (d) any issuance by the Company of securities as consideration to a service provider, which is not an officer or director of the Company for services to the Company on commercially reasonable terms and which in the aggregate is less than \$1,000,000. "**Common Stock Deemed Outstanding**" shall mean, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 8(a)(i) and 8(a)(ii), hereof, regardless of whether any options or convertible securities are actually exercisable or convertible at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable upon exercise of the Warrants. For purposes of this Section 8(a), the following shall be applicable:

- i. Issuance of Options. If the Company in any manner grants any rights, warrants or options to subscribe for or purchase Common Stock or convertible securities (an "**Option**") and the lowest price per share for which

one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any convertible securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the "lowest price per share for which one share of Common Stock is issuable upon exercise of such Options or upon conversion or exchange of such convertible securities" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any convertible security issuable upon exercise of such Option. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock or of such convertible securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such convertible securities. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(i) to the extent that such adjustment is based solely on the fact that the convertible securities issuable upon exercise of such Option are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

ii. Issuance of Convertible Securities. If the Company in any manner issues or sells any convertible securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such convertible securities for such price per share. For the purposes of this Section 8(a)(ii), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the convertible security and upon conversion or exchange of such convertible security. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such convertible securities, and if any such issue or sale of such convertible securities is made upon exercise of any Options for which adjustment of the Exercise Price had been or are to be made pursuant to other provisions of this Section 8(a), no further adjustment of the Exercise Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(ii) to the extent that such adjustment is based solely on the fact that such convertible securities are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.

iii. Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any convertible securities, or the rate at which any convertible securities are convertible into or exchangeable for Common Stock changes at any time, the Exercise Price in effect at the time of such change shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or convertible securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold and the number of shares of Common Stock acquirable hereunder shall be correspondingly readjusted. For purposes of this Section 8(a)(iii), if the terms of any Option or convertible security that was outstanding as of the date of issuance of this Warrant are changed in the manner described in the immediately preceding sentence, then such Option or convertible security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

iv. Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01. If any Common Stock, Options or convertible securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or convertible securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the average of the Closing Bid Price of such securities for the twenty (20) consecutive trading days immediately preceding the date of receipt. If any Common Stock, Options or convertible securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or convertible securities, as the case may be. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five Business Days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. The determination of such appraiser shall be final and binding upon all parties and the fees and expenses of such appraiser shall be borne by the Company.

v. Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in convertible securities or (2) to subscribe for or purchase Common Stock, Options or convertible securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

b. Adjustment of Warrant Exercise Price upon Subdivision or Combination of Common Stock. If the Company at any time after the date of issuance of this Warrant subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately increased. If the Company at any time after the date of issuance of this Warrant combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately decreased.

- c. Distribution of Assets. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets), to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement or other transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case:
- i. the Exercise Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution shall be reduced, effective as of the close of business on such record date, to a price determined by multiplying such Exercise Price by a fraction of which (A) the numerator shall be the Closing Bid Price on the trading day immediately preceding such record date minus the value of the Distribution (as determined in good faith by the Company's Board of Directors) applicable to one share of Common Stock, and (B) the denominator shall be the Closing Bid Price on the trading day immediately preceding such record date; and
 - ii. either (A) the number of Warrant Shares obtainable upon exercise of this Warrant shall be increased to a number of shares equal to the number of shares of Common Stock obtainable immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution multiplied by the reciprocal of the fraction set forth in the immediately preceding clause (i), or (B) in the event that the Distribution is of common stock of a company whose common stock is traded on a national securities exchange or a national automated quotation system, then the holder of this Warrant shall receive an additional warrant to purchase Common Stock, the terms of which shall be identical to those of this Warrant, except that such warrant shall be exercisable into the amount of the assets that would have been payable to the holder of this Warrant pursuant to the Distribution had the holder exercised this Warrant immediately prior to such record date and with an exercise price equal to the amount by which the exercise price of this Warrant was decreased with respect to the Distribution pursuant to the terms of the immediately preceding clause (i).
- d. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of shares of Common Stock obtainable upon exercise of this Warrant so as to protect the rights of the holder of this Warrant; provided that no such adjustment will increase the Exercise Price or decrease the number of shares of Common Stock obtainable as otherwise determined pursuant to this Section 8.
- e. Notice of Adjustments. In the event that: (i) the Company shall declare any dividend or distribution upon its stock, whether in cash, property, stock or other securities; (ii) the Company shall offer for subscription pro rata to the holders of any class of its Preferred Stock or other convertible stock any additional shares of stock of any class or other rights; (iii) there shall be any capital reorganization, reclassification, consolidation or merger; or (iv) there shall be any voluntary or involuntary dissolution, liquidation or winding up of the Company; then, in connection with each such event, the Company shall send to the Holder:
- i. At least twenty (20) days prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution, subscription rights (specifying the date on which the holders of Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of such capital reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up; and
 - ii. In the case of any such capital reorganization, reclassification, consolidation, merger or sale of all or substantially all of the Company's assets, dissolution, liquidation or winding up, at least twenty (20) days prior written notice of the date when the same shall take place and specifying the date on which the holders of Preferred Stock shall be entitled to exchange their Preferred Stock for securities or other property deliverable upon such capital reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up).

Each such written notice shall set forth, in reasonable detail, (i) the event requiring the adjustment, (ii) the amount of the adjustment, (iii) the method by which such adjustment was calculated, (iv) the Exercise Price, and (v) the number of shares subject to purchase hereunder after giving effect to such adjustment, and shall be given by first class mail, postage prepaid, addressed to the Holder, at the address as shown on the books of the Company.

9. Purchase Rights; Reorganization, Reclassification, Consolidation, Merger or Sale.

- a. In addition to any adjustments pursuant to Section 8 above, if at any time the Company grants, issues or sells any Options, convertible securities or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the "Purchase Rights"), then the holder of this Warrant will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.
- b. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to any individual, limited liability company, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof (each, a "Person") or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "Organic Change." Prior to the consummation of any (i) sale of all or substantially all of the Company's assets to an acquiring Person or (ii) other Organic Change following which the Company is not a surviving entity, the Company will secure from the Person purchasing such assets or the successor resulting from such Organic

Change (in each case, the "Acquiring Entity") written acknowledgment (in form and substance satisfactory to the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding) to deliver to each holder of Warrants in exchange for such Warrants, a security of the Acquiring Entity evidenced by a written instrument substantially similar in form and substance to this Warrant and satisfactory to the holders of the Warrants (including, an adjusted warrant exercise price equal to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and exercisable for a corresponding number of shares of Common Stock acquirable and receivable upon exercise of the Warrants, if the value so reflected is less than the Warrant Exercise Price in effect immediately prior to such consolidation, merger or sale).

10. Miscellaneous.

- a. Effective Date. The provisions of this Warrant shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Warrant shall be binding upon any successors or assigns of the Company.
- b. Attorneys' Fees. In any litigation, arbitration or court proceeding between the Company and the Holder relating hereto, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant.
- c. Governing Law. This Warrant shall be governed by and construed for all purposes under and in accordance with the laws of the State of California.
- d. Counterparts. This Warrant may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Titles and Subtitles. The titles of the paragraphs and subparagraphs of this Warrant are for convenience and are not to be considered in construing this Agreement.
- f. Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail, by registered or certified mail, addressed (i) to the Holder at the address set forth on the signature page hereof, and (ii) to the Company at 2445 Mission College Blvd., Santa Clara, CA 95054, or at such other address as any such party may subsequently designate by written notice to the other party.
- g. Survival. The representations, warranties, covenants and conditions of the respective parties contained herein or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.
- h. Amendments. Any provision of this Warrant may be amended by a written instrument signed by the Company and by the Holder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its officers thereunto duly authorized.

COMPANY:

8x8, INC.

Dated: December 16, 1999

By: _____

Paul Voois, Chief Executive Officer

HOLDER:

FLEETBOSTON ROBERTSON STEPHENS INC.

By:

Title:

Address:

-
-
-
-
-

(Signature Page(s) to Warrant)

EXHIBIT A

NOTICE OF EXERCISE

(1) The undersigned Holder hereby elects to purchase _____ shares of the Common Stock of 8x8, Inc., pursuant to the terms of the Warrant dated the _____ day of December, 1999 (the "Warrant") between 8x8, Inc. and the Holder, and tenders herewith payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.

(2) In exercising its rights to purchase the Common Stock of 8x8, Inc., the undersigned hereby confirms and acknowledges the investment representations and warranties made in Section 6 of the Warrant.

(3) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

Name

Signature

(4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned or in such other name as is specified below:

Name

Date

Signature

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock set forth below:

Investor Name	Address and Facsimile Number
Fisher Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel J. Hopkins Facsimile: (312) 338-0780 Telephone: (312) 696-2100
Wingate Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel J. Hopkins Facsimile: (312) 338-0780 Telephone: (312) 696-2100

and does irrevocably constitute and appoint Paul Voois to make such transfer on the books of 8x8, Inc., maintained for the purpose, with full power of substitution in the premises.

The undersigned also represents that, by assignment hereof, the Assignee acknowledges that this Warrant and the shares of stock to be issued upon exercise hereof or conversion thereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of this Warrant or any shares of stock to be issued upon exercise hereof or conversion thereof except under circumstances which will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale in violation of the Securities Act of 1933, as amended, or any applicable state securities law.

Dated: _____

Signature of Holder

THIS WARRANT AND THE SECURITIES WHICH MAY BE PURCHASED UPON THE EXERCISE OF THIS WARRANT HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE SECURITIES LAWS.

WARRANT TO PURCHASE COMMON STOCK

of

8x8, INC.

Void December 16, 2002

THIS CERTIFIES THAT, for value received, FleetBoston Robertson Stephens Inc. (the "**Holder**") is entitled, subject to the terms set forth below, to purchase from 8x8, Inc., a Delaware corporation (the "**Company**"), the number of shares of the Company's Common Stock (the "**Shares**") equal to ten percent (10%) of \$3,750,000 divided by the Conversion Price (as defined below) on the date which is 11 trading days after the date which is 90 days from the date hereof, at the Conversion Price (the "**Exercise Price**"); provided however, if the Company redeems the Series B Convertible Notes issued to Fisher Capital Ltd. and Wingate Capital Ltd. on December 16, 1999 (the "**Notes**") pursuant to Section 7 thereof and the Warrants (numbered WB1 and WB2) issued in connection with the Notes become null and void, this Warrant shall become null and void. The number, character and Exercise Price of the Shares are subject to adjustment as provided below. The term "**Warrant**" as used herein shall include this Warrant and any warrants delivered in substitution or exchange therefor as provided herein. "**Conversion Price**" means the product of (A) 117.5% and (B) the Market Price (as defined below) of the Common Stock on the date which is 90 days from the date hereof (subject to adjustment for stock dividends, stock splits, stock combinations or other similar transactions (each, a "**Recapitalization**")). "**Market Price**" shall mean, with respect to any security, that price which shall be computed as the arithmetic average of the closing bid prices for such security during the five (5) consecutive trading days immediately preceding such date of determination. All such determinations shall be appropriately adjusted for any Recapitalizations with respect to such shares.

1. Term of Warrant.

- a. **Term of Warrant.** Except as otherwise provided herein, this Warrant shall be exercisable, in whole or in part, during the term commencing on the date which is 11 trading days after the date which is 90 days from the date hereof and ending at 5:00 p.m., Pacific Standard Time, on December 16, 2002, and shall be void thereafter.

2. Exercise Of Warrants.

- a. **Cash Exercise.** The purchase rights set forth in this Warrant are exercisable by the Holder, in whole or in part, at any time, or from time to time commencing on the date which is 11 trading days after the date which is 90 days from the date hereof, prior to the expiration of the term set forth in Section 1 above, by the tender to the Company at its principal office of a notice of exercise in the form attached hereto as Exhibit A (the "**Notice of Exercise**"), duly completed and executed on behalf of the Holder and the payment to the Company by certified, cashier's or other check acceptable to the Company or by wire transfer of immediately available funds to such account as may be designated by the Company, of the aggregate purchase price of the Shares being purchased.
- b. **Net Issue Exercise.** Notwithstanding the payment provisions set forth in Section 2(a) above, if the Shares to be issued upon exercise of this Warrant are not registered and available for resale pursuant to a registration statement in accordance with the Registration Rights Agreement between the Company and the Holder, dated December _____, 1999 the Holder may elect to receive Shares equal to the value of this Warrant (or of any portion thereof remaining unexercised) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise and notice of such election, in which event the Company shall issue to the Holder that number of Shares computed using the following formula:

$$X = Y(A-B)$$

A

Where:

X = the number of Shares to be issued to the Holder;

Y = the number of Shares purchasable under this Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being cancelled (at the date of such calculation);

A = the fair market value of one share of the Shares (at the date of such calculation); and

B = the Exercise Price (as adjusted to the date of such calculation).

For purposes of the calculation above, the fair market value per share shall be the product of (i) the average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary or the last reported sale price of the Common Stock or the closing price quoted on the Nasdaq National Market or on any exchange on which the Common Stock is listed, whichever is applicable, as published in the Wall Street Journal for the five (5) trading days prior to the date of determination of fair market value and (ii) the number of Shares for which this Warrant is exercisable.

- c. Stock Certificates. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its tender for exercise as provided above, and the persons entitled to receive the Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such Shares as of the close of business on such date. As promptly as practicable on or after such date and in any event within ten (10) days thereafter, the Company, at its expense, shall deliver to the person or persons entitled to receive the same a certificate or certificates for that number of shares issuable upon such exercise. In the event that this Warrant is exercised in part, the Company shall, at its expense, execute and deliver a new Warrant with the same terms and conditions for the number of Shares that remain subject to this Warrant.
 - d. Taxes. The issuance of the Shares upon the exercise of this Warrant, and the delivery of certificates or other instruments representing such Shares, shall be made without charge to the Holder for any tax or other charge in respect of such issuance. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any certificate in a name other than that of the Holder and the Company shall not be required to issue or deliver any such certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.
3. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. In lieu of such fractional share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.
 4. No Rights As Stockholders. This Warrant does not entitle the Holder to any voting right or other rights as a stockholder of the Company prior to the exercise of the Holder's rights to purchase the Shares as provided for herein.
 5. Transfer of Warrants.
 - a. Warrant Register. The Company shall maintain a register (the "**Warrant Register**") containing the names and addresses of the Holder or Holders. Any Holder of this Warrant or any portion thereof may change its address as shown on the Warrant Register by written notice to the Company, requesting such change. Any notice or written communication required or permitted to be given to the Holder may be delivered or given by mail to such Holder as shown on the Warrant Register and at the address shown on the Warrant Register. Until this Warrant is transferred on the Warrant Register, the Company may treat the Holder as shown on the Warrant Register as the absolute owner of this Warrant for all purposes, notwithstanding any notice to the contrary.
 - b. Transferability and Non-negotiability of Warrant. This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable federal and state securities laws by the transferor and the transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, if such are requested by the Company), provided, however, that this Warrant may be assigned by the Holder to any person or entity affiliated with or established by the Holder. Subject to the provisions of this Warrant with respect to compliance with the Securities Act of 1933, as amended (the "**Act**"), title to this Warrant may be transferred by endorsement (by the Holder executing the assignment form (the "**Assignment Form**") attached hereto as Exhibit B) and delivery in the same manner as a negotiable instrument transferable by endorsement and delivery.
 - c. Exchange of Warrant Upon a Transfer. On surrender of this Warrant for exchange, properly endorsed on the Assignment Form and subject to the provisions of this Warrant with respect to compliance with the Act and with the limitations on assignments and transfers contained in this Section 5, the Company, at its expense, shall issue to or on the order of the Holder a new warrant or warrants with the same terms and conditions, in the name of the Holder or as the Holder (on payment by the Holder of any applicable transfer taxes) may direct, for the number of shares issuable upon exercise thereof.
 - d. Compliance with Securities Laws.
 - i. The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Shares to be issued upon exercise hereof are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder will not offer, sell or otherwise dispose of this Warrant or any Shares to be issued upon exercised hereof except under circumstances that will not result in a violation of the Act or any state securities laws. Upon exercise of this Warrant, the Holder shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the Shares so purchased are being acquired solely for the Holder's own account and not as a nominee for any other party, for investment, and not with a view toward distribution or resale; provided, however, that the Holder shall be able to transfer such Warrant or Shares (x) as provided in subparagraph (b) above and (y) in such other transactions as may be effected without registration pursuant to the Act or qualification pursuant to any relevant state securities laws and shall confirm such other matters related thereto as may be reasonably requested by the Company.

- ii. This Warrant and all Shares issued upon exercise hereof or conversion thereof shall be stamped or imprinted with a legend in substantially the following form:

THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SECURITIES AND RESTRICTING THEIR TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

6. Representations and Warranties by the Holder. The Holder represents and warrants to the Company as follows:

- a. Investment Purpose. The right to Shares issuable upon exercise of the Holder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, except as provided in Section 5 of this Agreement or pursuant to an effective registration statement under the Act, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption from the Act.
- b. Private Issue. The Holder understands (i) that the Shares issuable upon exercise of the Holder's rights contained herein is not registered under the Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 6.
- c. Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.
- d. Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), or file reports pursuant to Section 15(d) of the Exchange Act, or if a registration statement covering the securities under the Act is not in effect when it desires to sell (i) the rights to purchase the Shares pursuant to this Warrant or (ii) the Shares issuable upon exercise of this Warrant, it may be required to hold such securities for an indefinite period. The Holder is aware of the provisions of Rule 144 promulgated under the Act.

7. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Shares upon the exercise of this Warrant and, from time to time, will take all steps necessary to amend its Certificate of Incorporation (the "Certificate") to provide sufficient reserves of shares of Common Stock issuable upon exercise of the Warrant. The Company further covenants that all shares that may be issued upon the exercise of rights represented by this Warrant and payment of the Exercise Price, all as set forth herein, will be free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously or otherwise specified herein). The Company agrees that its issuance of this Warrant shall constitute full authority of its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Shares upon the exercise of this Warrant.

8. Adjustment Rights.

The Exercise Price and the number of shares purchasable hereunder are subject to adjustment from time to time, as follows:

- a. Adjustment of Warrant Exercise Price and Number of Shares upon Issuance of Common Stock. If and whenever on or after the date of issuance of this Warrant, the Company issues or sells any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with an employee benefit plan which has been approved by the Board of Directors of the Company or Excluded Securities (as defined below) or upon exercise or conversion of the Other Securities) for a consideration per share less than a price (the "Applicable Price") equal to the average of the Closing Bid Price of the Common Stock on the five (5) consecutive trading days immediately preceding such issue or sale, then immediately after such issue or sale the Exercise Price then in effect shall be reduced to an amount equal to the product of (x) the Exercise Price in effect immediately prior to such issue or sale and (y) the quotient determined by dividing (1) the sum of (I) the product derived by multiplying the Applicable Price by the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale, plus (II) the consideration, if any, received by the Company upon such issue or sale, by (2) the product derived by multiplying the (I) Applicable Price by (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of this Section 8, "Excluded Securities" shall mean any of the following (a) any issuance by the Company of securities in connection with a strategic partnership or joint venture with any entity whose primary business is not investing in or advising other entities, (b) shares of Common Stock issues by the Company in a firm commitment, underwritten public offering, (c) any issuance by the Company of securities as consideration for a merger or consolidation or the acquisition of a business, product, license or other assets of another person or entity and (d) any issuance by the Company of securities as consideration to a service provider, which is not an officer or director of the Company for services to the Company on commercially reasonable terms and which in the aggregate is less than \$1,000,000. "Common Stock Deemed Outstanding" shall mean, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 8(a)(i) and 8(a)(ii) hereof, regardless of whether any options or convertible securities are actually exercisable or convertible at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable upon exercise of the Warrants. For purposes of this Section 8(a), the following shall be applicable:

- i. Issuance of Options. If the Company in any manner grants any rights, warrants or options to subscribe for or purchase Common Stock or convertible securities (an "Option") and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any convertible securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the "lowest price per share for which one share of Common Stock is issuable upon exercise of such Options or upon conversion or exchange of such convertible securities" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any convertible security issuable upon exercise of such Option. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock or of such convertible securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such convertible securities. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(i) to the extent that such adjustment is based solely on the fact that the convertible securities issuable upon exercise of such Option are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.
 - ii. Issuance of Convertible Securities. If the Company in any manner issues or sells any convertible securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such convertible securities for such price per share. For the purposes of this Section 8(a)(ii), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the convertible security and upon conversion or exchange of such convertible security. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such convertible securities, and if any such issue or sale of such convertible securities is made upon exercise of any Options for which adjustment of the Exercise Price had been or are to be made pursuant to other provisions of this Section 8(a), no further adjustment of the Exercise Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 8(a)(ii) to the extent that such adjustment is based solely on the fact that such convertible securities are convertible into or exchangeable for Common Stock at a price which varies with the market price of the Common Stock.
 - iii. Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion or exchange of any convertible securities, or the rate at which any convertible securities are convertible into or exchangeable for Common Stock changes at any time, the Exercise Price in effect at the time of such change shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or convertible securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold and the number of shares of Common Stock acquirable hereunder shall be correspondingly readjusted. For purposes of this Section 8(a)(iii), if the terms of any Option or convertible security that was outstanding as of the date of issuance of this Warrant are changed in the manner described in the immediately preceding sentence, then such Option or convertible security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Exercise Price then in effect.
 - iv. Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.01. If any Common Stock, Options or convertible securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or convertible securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the average of the Closing Bid Price of such securities for the twenty (20) consecutive trading days immediately preceding the date of receipt. If any Common Stock, Options or convertible securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or convertible securities, as the case may be. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five Business Days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding. The determination of such appraiser shall be final and binding upon all parties and the fees and expenses of such appraiser shall be borne by the Company.
 - v. Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in convertible securities or (2) to subscribe for or purchase Common Stock, Options or convertible securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.
- b. Adjustment of Warrant Exercise Price upon Subdivision or Combination of Common Stock. If the Company at any time after the date of issuance of this Warrant subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately increased. If the Company at any time after the date of issuance of this Warrant combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will

be proportionately increased and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately decreased.

- c. Distribution of Assets. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement or other transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case:
- i. the Exercise Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution shall be reduced, effective as of the close of business on such record date, to a price determined by multiplying such Exercise Price by a fraction of which (A) the numerator shall be the Closing Bid Price on the trading day immediately preceding such record date minus the value of the Distribution (as determined in good faith by the Company's Board of Directors) applicable to one share of Common Stock, and (B) the denominator shall be the Closing Bid Price on the trading day immediately preceding such record date; and
 - ii. either (A) the number of Warrant Shares obtainable upon exercise of this Warrant shall be increased to a number of shares equal to the number of shares of Common Stock obtainable immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive the Distribution multiplied by the reciprocal of the fraction set forth in the immediately preceding clause (i), or (B) in the event that the Distribution is of common stock of a company whose common stock is traded on a national securities exchange or a national automated quotation system, then the holder of this Warrant shall receive an additional warrant to purchase Common Stock, the terms of which shall be identical to those of this Warrant, except that such warrant shall be exercisable into the amount of the assets that would have been payable to the holder of this Warrant pursuant to the Distribution had the holder exercised this Warrant immediately prior to such record date and with an exercise price equal to the amount by which the exercise price of this Warrant was decreased with respect to the Distribution pursuant to the terms of the immediately preceding clause (i).
- d. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of shares of Common Stock obtainable upon exercise of this Warrant so as to protect the rights of the holder of this Warrant; provided that no such adjustment will increase the Exercise Price or decrease the number of shares of Common Stock obtainable as otherwise determined pursuant to this Section 8.
- e. Notice of Adjustments. In the event that: (i) the Company shall declare any dividend or distribution upon its stock, whether in cash, property, stock or other securities; (ii) the Company shall offer for subscription pro rata to the holders of any class of its Preferred Stock or other convertible stock any additional shares of stock of any class or other rights; (iii) there shall be any capital reorganization, reclassification, consolidation or merger; or (iv) there shall be any voluntary or involuntary dissolution, liquidation or winding up of the Company; then, in connection with each such event, the Company shall send to the Holder:
- i. At least twenty (20) days prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution, subscription rights (specifying the date on which the holders of Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of such capital reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up; and
 - ii. In the case of any such capital reorganization, reclassification, consolidation, merger or sale of all of substantially all of the Company's assets, dissolution, liquidation or winding up, at least twenty (20) days prior written notice of the date when the same shall take place and specifying the date on which the holders of Preferred Stock shall be entitled to exchange their Preferred Stock for securities or other property deliverable upon such capital reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up).

Each such written notice shall set forth, in reasonable detail, (i) the event requiring the adjustment, (ii) the amount of the adjustment, (iii) the method by which such adjustment was calculated, (iv) the Exercise Price, and (v) the number of shares subject to purchase hereunder after giving effect to such adjustment, and shall be given by first class mail, postage prepaid, addressed to the Holder, at the address as shown on the books of the Company.

9. Purchase Rights; Reorganization, Reclassification, Consolidation, Merger or Sale.

- a. In addition to any adjustments pursuant to Section 8 above, if at any time the Company grants, issues or sells any Options, convertible securities or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then the holder of this Warrant will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.
- b. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to any individual, limited liability company, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof (each, a "**Person**") or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "**Organic Change**." Prior to the consummation of any (i) sale of all or substantially all of the Company's assets to an acquiring Person or (ii) other Organic Change following which the Company is not a surviving entity, the Company will secure from the Person purchasing such assets or the successor resulting from such Organic Change (in each case, the "**Acquiring Entity**") written acknowledgment (in

form and substance satisfactory to the holders of Warrants representing a majority of the shares of Common Stock obtainable upon exercise of the Warrants then outstanding) to deliver to each holder of Warrants in exchange for such Warrants, a security of the Acquiring Entity evidenced by a written instrument substantially similar in form and substance to this Warrant and satisfactory to the holders of the Warrants (including, an adjusted warrant exercise price equal to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and exercisable for a corresponding number of shares of Common Stock acquirable and receivable upon exercise of the Warrants, if the value so reflected is less than the Warrant Exercise Price in effect immediately prior to such consolidation, merger or sale).

10. Miscellaneous.

- a. Effective Date. The provisions of this Warrant shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Warrant shall be binding upon any successors or assigns of the Company.
- b. Attorneys' Fees. In any litigation, arbitration or court proceeding between the Company and the Holder relating hereto, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant.
- c. Governing Law. This Warrant shall be governed by and construed for all purposes under and in accordance with the laws of the State of California.
- d. Counterparts. This Warrant may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Titles and Subtitles. The titles of the paragraphs and subparagraphs of this Warrant are for convenience and are not to be considered in construing this Agreement.
- f. Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail, by registered or certified mail, addressed (i) to the Holder at the address set forth on the signature page hereof, and (ii) to the Company at 2445 Mission College Blvd., Santa Clara, CA 95054, or at such other address as any such party may subsequently designate by written notice to the other party.
- g. Survival. The representations, warranties, covenants and conditions of the respective parties contained herein or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.
- h. Amendments. Any provision of this Warrant may be amended by a written instrument signed by the Company and by the Holder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its officers thereunto duly authorized.

COMPANY:

8x8, INC.

Dated: December 16, 1999 By: _____

Paul Voois, Chief Executive Officer

HOLDER:

FLEETBOSTON ROBERTSON STEPHENS INC.

By:

Title:

Address:

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(Signature Page(s) to Warrant)

EXHIBIT A

NOTICE OF EXERCISE

(1) The undersigned Holder hereby elects to purchase _____ shares of the Common Stock of 8x8, Inc., pursuant to the terms of the Warrant dated the _____ day of December, 1999 (the "Warrant") between 8x8, Inc. and the Holder, and tenders herewith payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.

(2) In exercising its rights to purchase the Common Stock of 8x8, Inc., the undersigned hereby confirms and acknowledges the investment representations and warranties made in Section 6 of the Warrant.

(3) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

Name

Signature

(4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned or in such other name as is specified below:

Name

Date _____ Signature _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock set forth below:

Name of Assignee	Address	No. of Shares

and does irrevocably constitute and appoint Paul Voois to make such transfer on the books of 8x8, Inc., maintained for the purpose, with full power of substitution in the premises.

The undersigned also represents that, by assignment hereof, the Assignee acknowledges that this Warrant and the shares of stock to be issued upon exercise hereof or conversion thereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of this Warrant or any shares of stock to be issued upon exercise hereof or conversion thereof except under circumstances which will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale in violation of the Securities Act of 1933, as amended, or any applicable state securities law.

Dated: _____

Signature of Holder

8x8, INC.

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement ("Agreement") is made as of December 16, 1999, between 8x8, Inc., a Delaware corporation ("8x8"), and FleetBoston Robertson Stephens Inc. ("RS").

1. Definitions. As used in this Agreement:

- a. "Closing Date" means the Closing Date as defined in Section 1(b) of that certain Securities Purchase Agreement dated as of December 15, 1999 by and among 8x8 and the Buyers listed therein.
- b. "Form S-3" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC which similarly permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the commission.
- c. "Material Event" means the happening of any event during the period that the registration statement described in Section 2 hereof is required to be effective as a result of which, in the reasonable judgment of 8x8, such registration statement or the related prospectus contains or may contain any untrue statement of a material fact or omits or may omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.
- d. "Registrable Securities" means (i) the 8x8 shares of Common Stock issuable upon exercise of that certain Warrant, dated December 16, 1999, made by 8x8 and issued to RS and (ii) any shares of capital stock issued or issuable with respect to the 8x8 shares of Common Stock as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise.
- e. "SEC" means the Securities and Exchange Commission.
- f. "Securities Act" means the Securities Act of 1933, as amended.

Terms not otherwise defined herein have the meanings given to them in the Share Exchange Agreement.

2. Registration. 8x8 shall use commercially reasonable efforts to file with the SEC a registration statement no later than the first business day after the date which is 95 days after the Closing Date and shall use commercially reasonable efforts to cause to become effective, a Form S-3 covering the Registrable Securities within 150 days after the Closing Date; provided, however, that (i) RS shall provide all such information and materials relating to RS, and take all such action as may be required in order to permit 8x8 to comply with all the applicable requirements of the SEC and to obtain any desired acceleration of the effective date of such Form S-3, such provision of information and materials to be a condition precedent to the obligations of 8x8 pursuant to this Agreement and (ii) if the SEC reviews the registration statement, the Company shall have 180 days to cause the registration statement to be effective. The offerings made pursuant to such registrations shall not be underwritten. Notwithstanding the foregoing, 8x8 shall not be required to cause the Registrable Securities to be registered if 8x8's legal counsel delivers a legal opinion to RS that such sale may be effected in a single three-month period without registration under the Securities Act pursuant to Rule 144 under the Securities Act.
3. Postponement of Registration.

- a. Registration. Notwithstanding Section 2 above, 8x8 shall be entitled to postpone the declaration of effectiveness of any Form S-3 prepared and filed pursuant to Section 2 for a reasonable period of time, but not in excess of 60 calendar days after the applicable deadline, if the Board of Directors of 8x8, acting in good faith, determines that there exists material non-public information about 8x8.
- b. Material Event. RS agrees that, upon receipt of any notice from 8x8 of the happening of a Material Event, RS will forthwith discontinue disposition of the Registrable Securities pursuant to any Form S-3 described in Section 2 until RS's receipt of copies of supplemented or amended prospectuses prepared by 8x8 (which 8x8 will use its commercially reasonable efforts to prepare and file promptly), and, if so directed by 8x8, RS will deliver to 8x8 all copies in their possession, other than permanent file copies then in RS's possession, of the prospectus covering such Registrable

Securities current at the time of receipt of such notice. In no event shall 8x8 delay causing to be effective a supplement or post-effective amendment to any Form S-3 pursuant to Section 2 or the related prospectus, for more than 15 consecutive days or 30 days during any 365 consecutive calendar day period.

4. **Obligations of 8x8.** Except as set forth in Sections 2 and 3, 8x8 shall (i) prepare and file with the SEC the Form S-3 in accordance with Section 2 hereof with respect to the shares of Registrable Securities and shall use commercially reasonable efforts to cause such Form S-3 to become effective as provided in Section 2 and to keep such Form S-3 continuously effective until the earlier to occur of (A) the sale of all of the Registrable Securities so registered and (B) the first anniversary of the Effective Time; (ii) furnish to RS such number of copies of any prospectus (including any preliminary prospectus and any amended or supplemented prospectus), as RS may reasonably request in order to effect the offering and sale of the shares of the Registrable Securities to be offered and sold, but only while 8x8 shall be required under the provisions hereof to cause such Form S-3 to remain current; (iii) use its commercially reasonable efforts to register or qualify the shares of the Registrable Securities covered by such Form S-3 under the securities or blue sky laws of such jurisdictions as RS shall reasonably request (provided that 8x8 shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such jurisdiction where it has not been qualified), and do any and all other acts or things which may be reasonably necessary or advisable to enable RS to consummate the public sale or other disposition of the Registrable Securities in such jurisdictions; (iv) cause all such Registrable Securities to be listed on each securities exchange or National Association of Securities Dealers, Inc. Automated Quotation System on which similar securities issued by 8x8 are then listed; (v) notify RS upon the happening of any event as a result of which the prospectus included in such Form S-3, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing; (vi) so long as the Form S-3 remains effective, promptly prepare, file and furnish to RS a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of the Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing; (vii) notify RS promptly after it shall receive notice thereof, of the date and time any Form S-3 and each post-effective amendment thereto has become effective or a supplement to any prospectus forming a part of such Form S-3 has been filed; (viii) notify RS promptly of any request by the SEC for the amending or supplementing of such Form S-3 or prospectus or for additional information; and (ix) advise RS promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of any Form S-3 or the initiation or threatening of any proceeding for that purpose and promptly use commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued.
5. **Ineligibility for Form S-3.** In the event that Form S-3 is not available for any registration of Registrable Securities hereunder, the Company shall (i) register the sale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the registration statement then in effect until such time as a registration statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.
6. **Expenses.** 8x8 shall pay the expenses incurred by 8x8 in connection with any registration of Registrable Securities pursuant to this Agreement including all SEC, NASD and blue sky registration and filing fees, printing expenses, transfer agents' and registrars' fees, and the reasonable fees and disbursements of 8x8's outside counsel and independent accountants. RS shall be responsible for all commissions and transfer taxes, as well as any other expenses incurred by RS.
7. **Indemnification.** In the event of any offering registered pursuant to this Agreement:
 - a. 8x8 will indemnify RS with respect to any registration effected pursuant to this Agreement, against all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, or any amendment or supplement thereto, or prospectus related thereto, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading, or any violation by 8x8 of any rule or regulation promulgated under the Securities Act, or state securities laws, or common law, applicable to 8x8 in connection with any such registration, and will reimburse RS, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that 8x8 will not be liable in any such case (i) to the extent that any such claim, loss, damage, liability or expense arises out of or is based in any untrue statement or omission or alleged untrue statement or omission, made in reliance upon and in conformity with written information furnished to 8x8 by an instrument duly executed by RS and stated to be specifically for use therein or (ii) if a copy of the final prospectus relating to any registration statement (as then amended or supplemented if 8x8 shall have furnished any amendments or supplements thereto) (the "Final Prospectus") was not sent or given by or on behalf of RS to a purchaser of RS's Registrable Securities, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Registrable Securities to such purchaser, and if the final prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.
 - b. RS will severally indemnify 8x8, each of its directors and officers, each person who controls 8x8 within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) or a material fact contained in any registration statement, or any amendment or supplement thereto, or prospectus related thereto, or any omission (or alleged omission) to state therein a material fact

required to be stated therein or necessary to make the statements therein not misleading, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement or prospectus in reliance upon and in conformity with written information furnished to 8x8 by an instrument duly executed by RS and stated to be specifically for use therein and will reimburse 8x8, the remaining. Shareholders, such directors, officers, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement or prospectus, in reliance upon and in conformity with written information furnished to 8x8 by an instrument duly executed by RS and stated to be specifically for use therein.

- c. Each party entitled to indemnification under this Section 6 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has notice of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent, but only to the extent, that the Indemnifying Party's ability to defend against such claim or litigation is impaired as a result of such failure to give notice. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Whether or not the defense of any claim or action is assumed by the Indemnifying Party, such Indemnifying Party will not be subject to any liability for any settlement without its consent.
- d. The obligations of 8x8 and RS under this Section 6 shall survive the completion of any offering of stock in a registration statement under this Agreement.
8. **Non-Assignment of Registration Rights.** The rights to cause 8x8 to register Registrable Securities pursuant to this Agreement may not be assigned by RS to any person or entity; provided, however, that RS may assign the rights to cause 8x8 to register Registrable Securities pursuant to this Agreement to any affiliates and up to two (2) non-affiliates.
9. **Amendment of Registration Rights.** This Agreement may be amended by the holders of a majority of the Registrable Securities and 8x8 at any time by execution of an instrument in writing signed on behalf of each of the parties.
10. **Termination.** The registration rights set forth in this Agreement shall terminate at such time as all of the Registrable Securities then held by RS can be sold by RS in a single 3-month period in accordance with Rule 144 under the Securities Act.
11. **Grant of Additional Registration Rights.** RS acknowledges that 8x8 may grant registration rights to any other person or entity with respect to their shares of 8x8 on terms which may be materially different than the terms of this Agreement.
12. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon delivery to the party to be notified in person or by courier service or five days after deposit with the United States mail, postage prepaid, addressed (a) if to RS, at RS's addresses as set forth in the securities register of 8x8 as the case may be or (b) if to 8x8 at 2445 Mission College Blvd. Santa Clara, California 95054, Attention: Chief Executive Officer.
13. **Governing Law; Interpretation.** This Agreement shall be construed in accordance and governed for all purposes by the laws of the State of California regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.
14. **Severability; Survival.** If any portion of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state or local law, or to be otherwise invalid or unenforceable, such portion of this Agreement shall be of no force or effect, and this Agreement shall otherwise remain in full force and effect and be construed as if such portion had not been included in this Agreement.
15. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties and supersedes all prior discussions, agreements and understandings relating to the subject matter hereof.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

IN WITNESS WHEREOF, 8x8 and RS have caused this Agreement to be executed as of the date first above written.

-

8X8, INC.

By: _____

Name: Paul Voois

Title: Chief Executive Officer

-

FLEETBoston Robertson Stephens
Inc.

-

By: _____

Name: _____

Title: _____

8X8, INC.

1999 NONSTATUTORY STOCK OPTION PLAN

(as amended January 18, 2000)

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1. Purposes of the Plan. The purposes of this Nonstatutory Stock Option Plan are:

- o to attract and retain the best available personnel for positions of substantial responsibility,
- o to provide additional incentive to Employees and Consultants, and
- o to promote the success of the Company's business.

Options granted under the Plan will be Nonstatutory Stock Options.

2. Definitions. As used herein, the following definitions shall apply:

- a. "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.
- b. "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options are, or will be, granted under the Plan.
- c. "Board" means the Board of Directors of the Company.
- d. "Code" means the Internal Revenue Code of 1986, as amended.
- e. "Committee" means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.
- f. "Common Stock" means the Common Stock of the Company.
- g. "Company" means 8x8, Inc., a Delaware corporation.

- h. "Consultant" means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.
- i. "Director" means a member of the Board.
- j. "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.
- k. "Employee" means any person, including Officers, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.
- l. "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- m. "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:
 - i. If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;
 - ii. If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;
 - iii. In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.
- n. "Notice of Grant" means a written or electronic notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is part of the Option Agreement.
- o. "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.
- p. "Option" means a nonstatutory stock option granted pursuant to the Plan, that is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.
- q. "Option Agreement" means an agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.
- r. "Option Exchange Program" means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.
- s. "Optioned Stock" means the Common Stock subject to an Option.
- t. "Optionee" means the holder of an outstanding Option granted under the Plan.
- u. "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.
- v. "Plan" means this 1999 Nonstatutory Stock Option Plan.
- w. "Service Provider" means an Employee including an Officer, Consultant or Director.
- x. "Share" means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

y. "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

Subject to the provisions of Sections 12 and 17 of the Plan, the maximum aggregate number of Shares that may be optioned and sold under the Plan is 600,000 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated).

4. Administration of the Plan.

a. Administration. The Plan shall be administered by (i) the Board or (ii) a Committee, which committee shall be constituted to satisfy Applicable Laws.

b. Powers of the Administrator.

Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

- i. to determine the Fair Market Value of the Common Stock;
- ii. to select the Service Providers to whom Options may be granted hereunder;
- iii. to determine whether and to what extent Options are granted hereunder;
- iv. to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
- v. to approve forms of agreement for use under the Plan;
- vi. to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
- vii. to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;
- viii. to institute an Option Exchange Program;
- ix. to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;
- x. to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
- xi. to modify or amend each Option (subject to Section 14(b) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;
- xii. to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;
- xiii. to determine the terms and restrictions applicable to Options;
- xiv. to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by an Optionee to have Shares withheld for

this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable; and

xv. to make all other determinations deemed necessary or advisable for administering the Plan.

c. Effect of Administrator's Decision.

The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Options may be granted to Service

Providers except Officers and Directors; provided, however, that Options may be granted to Officers in connection with the Officer's initial employment by the Company.

6. Limitation. Neither the Plan nor any Option shall

confer upon an Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such relationship at any time, with or without cause.

7. Term of Plan. The Plan shall become

effective upon its adoption by the Board. It shall continue in effect for ten (10) years, unless sooner terminated under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be

stated in the Option Agreement.

9. Option Exercise Price and Consideration.

a. Exercise Price. The per share exercise price for

the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator.

b. Waiting Period and Exercise Dates. At the time an

Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised.

c. Form of Consideration. The Administrator shall

determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist entirely of:

i. cash;

ii. check;

iii. promissory note;

iv. other Shares which (A) in the case of Shares

acquired upon exercise of an option, have been owned by the Optionee for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

v. consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

vi. a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

vii. such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws; or

viii. any combination of the foregoing methods of payment.

10. Exercise of Option.

a. Procedure for Exercise; Rights as a

Shareholder. Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

- b. Termination of Relationship as a Service Provider. If an Optionee ceases to be a Service Provider, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Option Agreement, and only to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.
- c. Disability of Optionee. If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement, to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.
- d. Death of Optionee. If an Optionee dies while a Service Provider, the Option may be exercised within such period of time as is specified in the Option Agreement (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquires the right to exercise the Option by bequest or inheritance, but only to the extent that the Option is vested on the date of death. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, at the time of death, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. The Option may be exercised by the executor or administrator of the Optionee's estate or, if none, by the person(s) entitled to exercise the Option under the Optionee's will or the laws of descent or distribution. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.
- e. Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option previously granted based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.
11. Non-Transferability of Options. Unless determined otherwise by the Administrator, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option transferable, such Option shall contain such additional terms and conditions as the Administrator deems appropriate.
12. Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.
- a. Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance 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 price of shares of Common Stock subject to an Option.

- b. Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option until ten (10) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option will terminate immediately prior to the consummation of such proposed action.
- c. Merger or Asset Sale. In the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the Option, the Optionee shall fully vest in and have the right to exercise the Option as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option becomes fully vested and exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee in writing or electronically that the Option shall be fully vested and exercisable for a period of fifteen (15) days from the date of such notice, and the Option shall terminate upon the expiration of such period. For the purposes of this paragraph, the Option shall be considered assumed if, following the merger or sale of assets, the option or right confers the right to purchase or receive, for each Share of Optioned Stock, immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares), provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, for each Share of Optioned Stock to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets.
13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.
14. Amendment and Termination of the Plan
an.
- a. Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.
- b. Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to options granted under the Plan prior to the date of such termination.
15. Conditions Upon Issuance of Shares.
- a. Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.
- b. Investment Representations. As a condition to the exercise of an Option the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.
16. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's 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.
17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

1999 NONSTATUTORY STOCK OPTION PLAN

STOCK OPTION AGREEMENT

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Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Option Agreement.

I. NOTICE OF STOCK OPTION GRANT

[Optionee's Name and Address].

You have been granted an option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Grant Number _____

Date of Grant _____

Vesting Commencement Date _____

Exercise Price per Share _____ \$ _____

Total Number of Shares Granted _____

Total Exercise Price _____ \$ _____

Type of Option: Nonstatutory Stock Option

Term/Expiration Date: _____

-

Vesting Schedule:

Subject to the Optionee continuing to be a Service Provider on such dates, this Option shall vest and become exercisable in accordance with the following schedule:

[25% of the Shares subject to the Option shall vest twelve months after the Vesting Commencement Date, and 1/48th of the Shares subject to the Option shall vest upon the last day of each month thereafter.]

Termination Period:

This Option may be exercised for _____ [days/months] after Optionee ceases to be a Service Provider. Upon the death or Disability of the Optionee, this Option may be exercised for such longer period as provided in the Plan. In no event shall this Option be exercised later than the Term/Expiration Date as provided above.

II. AGREEMENT

1. Grant of Option. The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant attached as Part I of this Agreement (the "Optionee") an option (the "Option") to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per share set forth in the Notice of Grant (the "Exercise Price"), subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 14(b) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Option Agreement, the terms and conditions of the Plan shall prevail.
2. Exercise of Option.

- a. Right to Exercise. This Option is exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and the applicable provisions of the Plan and this Option Agreement.
- b. Method of Exercise. This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit A (the "Exercise Notice"), which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice shall be completed by the Optionee and delivered to [Title]. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of this Option unless such issuance and exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the Exercised Shares shall be considered transferred to the Optionee on the date the Option is exercised with respect to such Exercised Shares.

3. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:
 - a. cash;
 - b. check;
 - c. consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan; or
 - d. surrender of other Shares which (i) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six (6) months on the date of surrender, and (ii) have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares.
4. Non-Transferability of Option. This Option 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 Optionee only by the Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.
5. Term of Option. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option Agreement.
6. Tax Consequences. Some of the federal tax consequences relating to this Option, as of the date of this Option, are set forth below. THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. THE OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.
 - a. Exercising the Option. The Optionee may incur regular federal income tax liability upon exercise of an NSO. The Optionee will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the Fair Market Value of the Exercised Shares on the date of exercise over their aggregate Exercise Price. If the Optionee is an Employee or a former Employee, the Company will be required to withhold from his or her compensation or collect from Optionee and pay to the applicable taxing authorities an amount in cash equal to a percentage of this compensation income at the time of exercise, and may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.
 - b. Disposition of Shares. If the Optionee holds NSO Shares for at least one year, any gain realized on disposition of the Shares will be treated as long-term capital gain for federal income tax purposes.
7. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.
8. NO GUARANTEE OF CONTINUED SERVICE. OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED AN OPTION

OR PURCHASING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of the Plan and this Option Agreement. Optionee has reviewed the Plan and this Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option Agreement and fully understands all provisions of the Plan and Option Agreement. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and Option Agreement. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

OPTIONEE _____ 8x8, INC.

Signature _____ By _____

Print Name _____ Title _____

Residence Address _____

EXHIBIT A

8x8, INC.

1999 NONSTATUTORY STOCK OPTION PLAN

EXERCISE NOTICE

8x8, Inc.
2445 Mission College Blvd.
Suite 105
Santa Clara, CA 95054
Attention: [Title]

1. Exercise of Option. Effective as of today, _____, the undersigned ("Purchaser") hereby elects to purchase _____ shares (the "Shares") of the Common Stock of 8x8, Inc. (the "Company") under and pursuant to the 1999 Nonstatutory Stock Option Plan (the "Plan") and the Stock Option Agreement dated _____, (the "Option Agreement"). The purchase price for the Shares shall be \$ _____, as required by the Option Agreement.
2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price for the Shares.

3. Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Shareholder. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 12 of the Plan.

5. Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

6. Entire Agreement; Governing Law. The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan and the Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.

Submitted by: _____ Accepted by: _____

PURCHASER _____ 8X8, INC.

Signature _____ By _____

Print Name _____ Title _____

Date Received _____

Address: _____ Address: _____

 Suite 105 2445 Mission College Blvd.,

 Santa Clara, CA 95054

THE SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM CONDENSED CONSOLIDATED BALANCE SHEETS, CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

1,000

9-MOS	
MAR-31-2000	
APR-01-1999	
DEC-31-1999	
	21,781
	0
	1,395
	0
	1,536
	25,796
	2,260
	0
	33,709
	6,899
	0
	0
	0
	19
	19,291
33,709	
	15,715
	18,842
	6,678
	6,792
	29,579
	0
	0
	(15,344)
	66
	(15,410)
	0
	0
	0
	(15,410)
	(0.88)
	(0.88)

ITEM SHOWN NET OF ALLOWANCE, CONSISTENT WITH THE BALANCE SHEET PRESENTATION.

Name of Assignee	Address	No. of Shares