

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**AMENDMENT NO. 3**  
**TO**  
**FORM S-3**  
**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**8X8, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or other Jurisdiction of  
Incorporation or Organization)

**77-0142404**

(I.R.S. Employer Identification No.)

**2445 Mission College Blvd.**  
**Santa Clara, CA 95054**  
**(408) 727-1885**

(Address, including zip code, and telephone number, including area code, of the Registrant's principal executive offices)

**JOE PARKINSON**  
**CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF THE BOARD**  
**8X8, INC.**

**2445 MISSION COLLEGE BLVD.**  
**SANTA CLARA, CA 95054**  
**(408) 727-1885**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

**JOHN T. SHERIDAN, ESQ.**  
**WILSON, SONSINI, GOODRICH & ROSATI**  
**PROFESSIONAL CORPORATION**  
**650 PAGE MILL ROAD**  
**PALO ALTO, CA 94304**  
**(650) 493-9300**

**APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:  
FROM TIME TO TIME AFTER THIS REGISTRATION STATEMENT BECOMES EFFECTIVE.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.  O

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.  X

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  O

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  O

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.  O

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be amended or changed. The selling stockholders may not sell these securities pursuant to this prospectus until the Registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any State where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED February 5, 2002**

# PROSPECTUS

## 1,000,000 SHARES OF COMMON STOCK



### 8X8, INC.

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This prospectus relates to the public offering, which is not being underwritten, of 1,000,000 shares of our common stock which is held by the selling stockholders identified on page 16 of this prospectus. We issued these shares of our common stock to the selling stockholders in a private transaction.

The prices at which the selling stockholders may sell the shares will be determined by the prevailing market price for the shares or in negotiated transactions. We will not receive any of the proceeds from the sale of the shares.

Our common stock is quoted on the Nasdaq National Market under the symbol "EGHT". On February \_\_, 2002, the last sale price of our common stock was \$\_\_\_\_\_ per share.

THE SHARES OFFERED IN THIS PROSPECTUS INVOLVE A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY CONSIDER THE RISK FACTORS COMMENCING ON PAGE 3 IN DETERMINING WHETHER TO PURCHASE THE COMMON STOCK.

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THESE SECURITIES OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THE DATE OF THIS PROSPECTUS IS FEBRUARY , 2002**

### THE COMPANY

8x8, Inc. and its subsidiaries (collectively, We or 8x8) develop and market communication technology for Internet Protocol or, IP, telephony and video applications. We have three product lines: voice and video semiconductors and related software, hosted Internet Private Branch Exchange or, iPBX, solutions, and telecommunication services software.

During the fiscal year ended March 31, 2001, we formed two subsidiaries, Netergy Microelectronics, Inc. and Centile, Inc. and reorganized our operations more clearly along our three product lines. Netergy Microelectronics, Inc. provides voice and video semiconductors and related communication software to original equipment manufacturers of telephones, terminal adapters, and other edge devices and to other semiconductor companies. Netergy Microelectronics' technologies are used to make IP telephones and to voice-enable cable and digital subscriber line modems, wireless devices, and other broadband technologies. Centile, Inc. develops and markets hosted iPBX solutions that allow service providers to offer the features and functions that a user commonly expects to find in a typical phone system to small and medium-sized businesses over broadband networks. A hosted iPBX solution is a software application that implements the functionality of a business phone system over the same data connection that a business uses for connection to the internet. The phone system software runs on servers that are located at a central data center so that the only phone system equipment that is required at the customer site are telephones. The phone system can also be accessed and controlled from any web browser on the internet. We have a third product line, telecommunications services software, that includes a service creation environment and a unified messaging application (collectively, the SCE Product), at the parent company level. The service creation environment is a software application that enables software developers to create new telecommunication software applications by using a Windows-based visual flow chart environment, which has been used to implement entire voice mail systems using these flow chart descriptors. Unified messaging is a voicemail system that is capable of accepting voice messages, FAX transmissions and e-mail in a single mailbox. The SCE Product is designed for use by telecommunication equipment manufacturers and service providers.

We were incorporated in California in February 1987 and in December 1996 we reincorporated in Delaware. In August 2000, we changed our name from 8x8, Inc. to Netergy Networks, Inc. We changed our name back to 8x8, Inc. in July 2001.

Our principal offices are located at 2445 Mission College Blvd., Santa Clara, California 95054 and our telephone number is (408) 727-1885.

### RISK FACTORS

Investors should carefully consider the risks described below before making an investment decision. Our business operations may be impaired by additional risks not presently known to us or that we currently believe are immaterial. Our business, results of operations or cash flows could be harmed by any of these risks. In such case the trading price of our common stock could decline, and you may lose all or part of your investment. You should carefully consider these risk factors, together with all of the other

information included in this prospectus, including the documents incorporated in this prospectus by reference, before you decide whether to purchase shares of our common stock.

**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 or cause us to implement additional cost reduction strategies**

As of September 30, 2001, we had approximately \$19.0 million in cash and cash equivalents. We believe that our current cash and cash equivalents, and cash generated from operations, if any, will satisfy our expected working capital and capital expenditure requirements through at least the next twelve months. We may, however, need additional working capital shortly thereafter. Accordingly, we may seek additional financing at some point during the next twelve months in order to meet our cash requirements in fiscal 2003. We may also 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 may require us to further reduce our operating costs and other expenditures, including additional reductions of personnel and suspension of salary increases and capital expenditures. Alternatively, or in addition to such potential measures, we may elect to implement other cost reduction actions as we may determine are necessary and in our best interests, including the possible sale or cessation of certain of our business segments. Any such actions undertaken might limit our opportunities to realize plans for revenue growth and we might not be able to reduce our costs in amounts sufficient to achieve break-even or profitable 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 have a history of losses and we are uncertain as to our future profitability**

We recorded an operating loss of approximately \$6.2 million in the six months ended September 30, 2001 and we ended the period with an accumulated deficit of \$134.6 million. In addition, we recorded operating losses of \$74.5 million and \$27.1 million for the fiscal years ended March 31, 2001 and 2000, respectively. We expect that we will 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.

**If we fail to meet the continued listing requirements of the Nasdaq National Market, our common stock could be delisted resulting in a decline in the liquidity of our common stock**

Our common stock is listed on the Nasdaq National Market. The Nasdaq Stock Market's Marketplace Rules impose requirements for companies listed on the Nasdaq National Market to maintain their listing status, including minimum bid price and net tangible assets or stockholders' equity requirements. Our common stock has traded at levels lower than the minimum bid price threshold of \$1.00 on several occasions recently. If our minimum bid price does not rise above the threshold we could face delisting. Delisting could reduce the ability of our shareholders to purchase or sell shares as quickly and as inexpensively as they have done historically. For instance, failure to obtain listing on another market or exchange may make it more difficult for traders to sell our securities. Broker-dealers may be less willing or able to sell or make a market in our common stock. Not maintaining a listing on a major stock market may:

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

**The growth of our business and future profitability depends on future IP telephony revenue**

We believe that our business and future profitability will be largely dependent on widespread market acceptance of our IP telephony technology and products. Our videoconferencing semiconductor business has not provided, nor is it expected to provide, sufficient revenues to profitably operate our business. To date, we have not generated significant revenue from the sale of our IP telephony products. If we are not able to generate significant revenues selling into the IP telephony market, our business and operating results would be seriously harmed.

Success of our IP telephony product strategy assumes that there will be future demand for IP telephony systems and services. 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 may 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 and/or regulatory approval cycles;
- new product introductions by us or our competitors;
- market acceptance of new or existing products;
- the cost and availability of components;
- the mix of our customer base and sales channels;
- the mix of products sold;
- the management of inventory;
- 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 little or no 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 videoconferencing semiconductor products will continue to decrease for the foreseeable future. Average selling prices realized to date for our IP telephony semiconductors have been lower than those historically attained for our videoconferencing semiconductor products resulting in lower gross margins. 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 whom 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 original equipment manufacturers, 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 our competitors or us 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 or all future periods 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 of our common stock.

## **We may not be able to manage our inventory levels effectively, which may lead to inventory obsolescence that 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. 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 business, operating results, and financial condition.

## **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 has been to relatively few customers, although the composition of these customers has varied. Revenues from our ten largest customers for the quarters ended September 30, 2001 and 2000, respectively, accounted for approximately 86% and 51% of total revenues. Revenues from our ten largest customers for the fiscal years ended March 31,

2001 and 2000 accounted for approximately 48% and 35%, respectively, of total revenues. 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, substantially all of our license and other revenues are nonrecurring.

**The IP telephony market is subject to rapid technological change and we depend on new product introduction in order to maintain and grow our business**

IP telephony is an emerging market that is characterized by rapid changes in customer requirements, frequent introductions of new and enhanced products, and continuing and rapid technological advancement. To compete successfully in this emerging market, we must continue to design, develop, manufacture, and sell new and enhanced semiconductor and IP telephony software products and services that provide increasingly higher levels of performance and reliability at lower cost. These new and enhanced products must take advantage of technological advancements and changes, and respond to new customer requirements. Our success in designing, developing, manufacturing, and selling such products and services will depend on a variety of factors, including:

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

Additionally, we may also be required to collaborate with third parties to develop our products and may not be able to do so on a timely and cost-effective basis, if at all. 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.

**The long and variable sales and deployment cycles for our IP telephony software products may cause our revenue and operating results to vary**

Our IP telephony software products, including our hosted iPBX and the SCE Product, have lengthy sales cycles, and we may incur substantial sales and marketing expenses and expend significant management effort without making a sale. A customer's decision to purchase our products often involves a significant commitment of its resources and a lengthy product evaluation and qualification process. In addition, the length of our sales cycles will vary depending on the type of customer to whom we are selling and the product being sold. Even after making the decision to purchase our products, our customers may deploy our products slowly. Timing of deployment can vary widely and will depend on various factors, including:

- the size of the network deployment;
- the complexity of our customers' network environments;
- our customers' skill sets;
- the hardware and software configuration and customization necessary to deploy our products; and
- our customers' ability to finance their purchase of our products.

As a result, it is difficult for us to predict the quarter in which our customers may purchase our IP telephony software products, and our revenue and operating results may vary significantly from quarter to quarter.

**If our products do not interoperate with our customers' networks, orders for our products will be delayed or canceled and substantial product returns could occur, which could harm our business**

Many of the potential customers for our hosted iPBX and unified messaging products have requested that our products be designed to interoperate with their existing networks, each of which may have different specifications and use multiple standards. Our customers' networks may contain multiple generations of products from different vendors that have been added over time as their networks have grown and evolved. Our products must interoperate with these products as well as with future products in order to meet our customers' requirements. In some cases, we may be required to modify our product designs to achieve a sale, which may result in a longer sales cycle, increased research and development expense, and reduced operating margins. If our products do not interoperate with existing equipment or software in our customers' networks, installations could be delayed, orders for our products could be canceled or our products could be returned. This could harm our business, financial condition, and results of operations.

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

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

## **Intense competition in the markets in which we compete could prevent us from increasing or sustaining our revenue and prevent us from achieving profitability**

We expect our competitors to continue to improve the performance of their current products and introduce new products or new technologies. If our competitors successfully introduce new products or enhance their existing products, this could reduce the sales or market acceptance of our products and services, increase price competition or make our products obsolete. To be competitive, we must continue to invest significant resources in research and development, sales and marketing, and customer support. We may not have sufficient resources to make these investments or to make the technological advances necessary to be competitive, which in turn will cause our business to suffer.

In addition, our focus on developing a range of technology products, including semiconductors and related embedded software, hosted iPBX solutions, and service creation software, places a significant strain on our research and development resources. Competitors that focus on one aspect of technology, such as software or semiconductors, may have a considerable advantage over us. 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. For example, certain competitors in the market for our semiconductor products maintain their own semiconductor foundries and may therefore benefit from certain capacity, cost and technical advantages. Many also have greater name recognition and a larger installed base of products than us. 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 than us 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 harm our business, operating results, and financial condition.

## **If we do not develop and maintain successful partnerships for IP 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 communication systems are extremely complex and no single company possesses all the required technology components needed to build a complete end to end solution. We will likely need to enter into partnerships to augment our development programs and to assist us in marketing complete solutions to our targeted customers. 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 our infringement 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 internationally. As of the date of this filing we hold forty-seven United States patents and have a number of United States and foreign patent applications pending. We cannot predict whether such pending patent applications will result in issued patents. We may not be able to protect our proprietary rights in the United States or internationally (where effective intellectual property protection may be unavailable or limited), and competitors may independently develop technologies that are similar or superior to our technology, duplicate our technology or design around any patent of ours. We have in the past licensed and in the future expect to continue licensing our technology to others; many of who are located or may be located abroad. There are no assurances that such licensees will protect our technology from misappropriation. Moreover, litigation may be necessary in the future to enforce our intellectual property rights, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of management time and resources and could have a material adverse effect on our business, financial condition, liquidity and operating results. Any settlement or adverse determination in such litigation would also subject us to significant liability.

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. We could also be required to refrain from using, manufacturing or selling certain products or using certain processes, either of which could have a material adverse effect on our business and operating results. From time to time, we have received, and may continue to receive in the future, notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights. There can be no assurance that we will prevail in these discussions and actions or that other actions alleging infringement by us of third-party patents will not be asserted or prosecuted against the Company.

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

### **Continued reductions in levels of capital investment by telecommunication service providers might impact our ability to increase revenue and prevent us from achieving profitability**

The market for the services provided by telecommunication service providers who compete against traditional telephone companies has only begun to emerge, and many of these service providers are still building their infrastructure and rolling out their services. These telecommunication service providers require substantial capital for the development, construction, and expansion of their networks and the introduction of their services. Financing may not be available to emerging telecommunication service providers on favorable terms, if at all. The inability of our current or potential emerging telecommunication service provider customers to acquire and keep customers, to successfully raise needed funds, or to respond to any other trends such as price reductions for their services or diminished demand for telecommunication services generally, could adversely affect their operating results or cause them to reduce their capital spending programs. If our current or potential customers are forced to defer or curtail their capital spending programs, sales of our hosted iPBX and SCE Product to those telecommunication service providers may be adversely affected, which would negatively impact our business, financial condition, and results of operations. In addition, many of the industries in which telecommunication service providers operate have recently experienced consolidation. The loss of one or more of our current or potential telecommunication service provider customers, through industry consolidation or otherwise, could reduce or eliminate our sales to such a customer and consequently harm our business, financial condition, and results of operations.

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

Circuit-switched telephony networks feature 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, digital subscriber lines, and wireless local loop, may 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. IP telephony products rely heavily on standards such as H.323, SIP, MGCP, and Megaco 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. 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 IP telephony products, which would have a material adverse effect on our business, financial condition and operating results.

### **Future regulation or legislation of the Internet 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 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, any of which could restrict our business or increase our cost of doing business. The increasing growth of the broadband IP telephony market and popularity of broadband IP telephony products and services heighten the risk that governments will seek to regulate broadband IP telephony and the Internet. In addition, large, established telecommunication companies may devote substantial lobbying efforts to influence the regulation of the broadband IP telephony market, which may be contrary to our interests.

### **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 related to the development and production of our semiconductors. 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. 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.

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

We outsource the manufacturing of our semiconductor products to independent foundries. Our primary semiconductor manufacturer is Taiwan Semiconductor Manufacturing Corporation (TSMC). While TSMC has been a valuable and capable supplier, there are no assurances or supply contracts guaranteeing that they will continue to supply us with our required wafer supply. Furthermore, Taiwan is always subject to geological or geopolitical disturbances that could instantly cut off such supply. We also rely on other third party manufacturers 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, in volumes, on a cost effective basis or in a timely manner. For our semiconductor products, the time to port our technology to another foundry, the time to qualify the new versions of product, and the cost of this effort as well as the tooling associated with wafer production would have a material adverse effect on our business, operating results, and financial condition.

**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 we offer 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 our testing, our suppliers or our customers may find errors, defects or functional limitations in new products after commencement of commercial production. This could result 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.

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

Sales to customers outside of North America during the three and six month periods ended September 30, 2001 were 60% and 62%, respectively. The table below shows the percentage of total revenue received from customers in the different regions:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2001	2000	2001	2000
North America	40%	62%	38%	45%
Europe	21%	15%	21%	25%
Taiwan	17%	5%	17%	14%
Other Asia Pacific	22%	18%	24%	16%
	100%	100%	100%	100%

Substantially all of our current semiconductor and system-level 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 telecommunication 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 our international operations. Taiwan in particular is subject to a high rate of natural disasters, such as earthquakes or typhoons, which could have significant impact on our suppliers and customers due to a



delay in operations within that country. In addition, Taiwan's tenuous relationship with mainland China is a source of continuing concern due to potential hostilities. A significant decline in demand from foreign markets could have a material adverse effect on our business, operating results, and financial condition.

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

The development and marketing of our IP telephony products will continue to place a significant strain on our limited personnel, management, and other resources. While the pace of economic growth in the San Francisco Bay Area (where our corporate headquarters are located) has slowed in recent months, competition for highly skilled engineering, sales, marketing, and support personnel has remained strong. Any failure to retain qualified personnel could adversely affect our financial results and impair our growth. We have no written employment contracts with employees but we have provided our Chief Executive Officer, through a resolution of our Board of Directors, with severance benefits that vest over time as a retention device. Similarly, the Board of Directors authorized severance arrangements with Bryan R. Martin, Dr. Philip Bednarz, David M. Stoll, and certain other vice-presidents of Netergy Microelectronics, Inc., which are all fully vested. We primarily rely on equity compensation plans and compensation policies to retain our key personnel. We currently do not maintain key person life insurance policies on any of our employees.

### **Our stock price has been highly volatile**

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; and
- developments with respect to patents or proprietary rights, general market conditions, changes in financial estimates by securities analysts, and other factors which could be unrelated to, or outside 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.

### **The location of our headquarters facility subjects us to the risk of earthquakes**

Our corporate headquarters is located in the San Francisco Bay area of Northern California, a region known for seismic activity. A significant natural disaster, such as an earthquake, could have a material adverse impact on our business, operating results, and financial condition.

### **We may face interruption of production and services due to increased security measures in response to recent and potential future terrorist activities**

Our business depends on the free flow of products and services through the channels of commerce. Recently, in response to terrorists' activities and threats aimed at the United States, transportation, mail, financial and other services have been slowed or stopped altogether. Further delays or stoppages in transportation, mail, financial or other services, particularly any such delays or stoppages which harm our ability to obtain an adequate supply of wafers and products from our independent foundries, could harm our business, results of operations and financial condition. Furthermore, we may experience an increase in operating costs, such as costs for transportation, insurance and security as a result of the activities and potential activities. We may also experience delays in receiving payments from customers that have been affected by the terrorist activities and potential activities. The United States economy in general is being adversely affected by terrorist activities and potential terrorist activities. Any economic downturn could adversely impact our results of operations, impair our ability to raise capital or otherwise adversely affect our ability to grow our business. Moreover, we cannot determine whether other attacks may occur in the future and the effects of such attacks on our business.

### **If we fail to obtain or maintain effectiveness of a registration statement for the resale of 1,000,000 shares of our common stock issued in connection with the redemption of our outstanding convertible debt we may be forced to pay a cash penalty or redeem all or a portion of the shares being registered causing our business to suffer**

Under the terms of a registration rights agreement we entered into in connection with the redemption of our outstanding convertible debt we agreed to register the shares for resale by the former note holders. If we fail to obtain or maintain effectiveness of the registration statement covering the resale of 1,000,000 shares of common stock, we may be required to pay a cash penalty and may

be required to redeem all or a portion of the shares of common stock to be registered. Under the agreement the redemption price would be the higher of \$0.898 or the market price of our common stock at the time of the redemption. If we are required to pay a cash penalty or to redeem any of the shares, this will deplete our cash reserves, which may cause harm to our business, results of operations and financial condition.

### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements. These statements relate to future events or our future financial performance. We have attempted to identify forward-looking statements by terminology including "believes," "can," "continue," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "should," or "will" or the negative of these terms or other comparable terminology.

Forward looking statements involve known and unknown risks and uncertainties which may cause our actual results in future periods to differ materially from what is currently anticipated. We make cautionary statements in certain sections of this prospectus, including under "Risk Factors." You should read these cautionary statements as being applicable to all related forward-looking statements wherever they appear in:

- this prospectus;
- the materials referred to in this prospectus;
- the materials incorporated by reference into this prospectus; and
- our press releases.

No forward-looking statement is a guarantee of future performance and you should not place undue reliance on any forward-looking statement.

### **WHERE YOU CAN FIND MORE INFORMATION**

Because we are subject to the informational requirements of the Exchange Act, we file quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission (SEC). You may read and copy these reports, proxy statements and other information at the public reference facilities maintained by the SEC at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. You may also obtain copies of those materials at prescribed rates from the public reference section of the SEC at 450 Fifth Street, Washington, D.C. 20549. The public may obtain information on the operation of the public reference room by calling the SEC at (800) SEC-0330. In addition, we are required to file electronic versions of those materials with the SEC through the SEC's EDGAR system. The SEC maintains a web site at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered with this prospectus. This prospectus does not contain all of the information in the registration statement, parts of which we have omitted, as allowed under the rules and regulations of the SEC. You should refer to the registration statement for further information with respect to us and our securities. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete and, in each instance, we refer you to the copy of each contract or document filed as an exhibit to the registration statement. Copies of the registration statement, including exhibits, may be inspected without charge at the SEC's principal office in Washington, D.C., and you may obtain copies from this office upon payment of the fees prescribed by the SEC. We will furnish without charge to each person to whom a copy of this prospectus is delivered, upon written or oral request, a copy of the information that has been incorporated by reference into this prospectus (except exhibits, unless they are specifically incorporated by reference into this prospectus). You should direct any requests for copies to: 8x8, Inc., 2445 Mission College Blvd., Santa Clara, California 95054, Attention: Chief Financial Officer, Telephone: (408) 727-1885.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The SEC allows us to incorporate by reference certain of our publicly-filed documents into this prospectus, which means that information included in these documents is considered part of this prospectus. We incorporate by reference in this prospectus the information contained in the following documents:

- our Annual Report on Form 10-K for the year ended March 31, 2001 filed May 24, 2001;
- our Proxy Statement dated June 14, 2001, filed in connection with our 2001 Annual Meeting of Stockholders;
- our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001, filed July 27, 2001;
- our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001, filed October 25, 2001;
- our Current Report on Form 8-K, filed April 23, 2001;
- our Current Report on Form 8-K, filed November 14, 2001;
- our Current Report on Form 8-K, filed December 17, 2001;

- our Current Report on Form 8-K/A, filed January 30, 2002;
- the description of our common stock in our registration statement on Form 8-A filed on November 21, 1996, including any amendments or reports filed for the purpose of updating such description; and
- all documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15 of the Exchange Act until all of the securities that we may offer with this prospectus are sold.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, other than the exhibits to those documents. You may obtain copies of those documents from us, free of cost, by contacting us at the address or telephone number provided in "Where You Can Find More Information" immediately above.

Information that we file later with the SEC and that is incorporated by reference in this prospectus will automatically update information contained in this prospectus or that was previously incorporated by reference into this prospectus. You will be deemed to have notice of all information incorporated by reference in this prospectus as if that information was included in this prospectus.

## USE OF PROCEEDS

The proceeds from the sale of the common stock offered pursuant to this prospectus are solely for the account of the selling stockholders. Accordingly, we will not receive any proceeds from the sale of the shares from the selling stockholders.

## SELLING STOCKHOLDERS

On December 17, 2001, we redeemed all of our outstanding 4% Series A and Series B convertible subordinated notes due December 2002. In connection with the transaction we agreed to register 1,000,000 shares of our common stock.

The following table sets forth certain information known to us with respect to the beneficial ownership of our common stock by the selling stockholders, as of December 17, 2001. The following table assumes that the selling stockholders sell all of their shares being offered pursuant to this prospectus. We are unable to determine the exact number of shares that will actually be sold. None of the selling stockholders has held any position or office or had a material relationship with us.

The percentage of shares beneficially owned is based on 27,894,280 shares outstanding at December 17, 2001 determined in accordance with Rule 13d-3 of the Exchange Act, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any shares as to which the individual has sole or shared voting power or investment power and also any shares which the individual has the right to acquire within 60 days of December 17, 2001 through the exercise of any warrants or other right. Unless otherwise indicated in the footnotes, each person has sole voting and investment power (or shares such powers with his or her spouse) with respect to the shares shown as beneficially owned.

Name of Selling Stockholder	Number of Shares Beneficially Owned Prior to Offering	Shares Being Offered	Shares Beneficially Owned After Offering <sup>(1)</sup>	
			Number <sup>(2)</sup>	Percent
Fisher Capital Ltd. <sup>(3)(4)</sup>	1,015,280	620,000	395,280	1.4%
Wingate Capital Ltd. <sup>(3)(5)</sup>	622,269	380,000	242,269	*
	1,637,549	1,000,000	637,549	2.2%

\* Represents beneficial ownership of less than 1% of common stock.

(1) This registration statement also shall cover any additional shares of common stock which become issuable in connection with the shares registered for sale hereby by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of 8x8's outstanding shares of common stock.

(2) This table assumes that all shares offered hereby will be sold by the selling shareholders.

(3) Citadel Limited Partnership (Citadel) is the trading manager of each of Fisher Capital Ltd. (Fisher) and Wingate Capital Ltd. (Wingate) and consequently has voting control and investment discretion over securities held by Fisher and Wingate. The ownership information for Fisher does not include the ownership information for Wingate, and the ownership information for Wingate does not include the ownership information for Fisher. Citadel disclaims beneficial ownership of the shares beneficially owned by Fisher and Wingate, and each of Fisher and Wingate disclaims beneficial ownership of the shares beneficially owned by the other. Kenneth C. Griffin indirectly controls Citadel. Mr. Griffin disclaims beneficial ownership of the shares beneficially owned by Citadel, Fisher and Wingate. Fisher and Wingate are not registered broker-dealers. Fisher and Wingate, however, are under common control with, and therefore an affiliate of, a registered broker-dealer.

(4) Includes 620,000 shares of common stock held by Fisher Capital Ltd., all of which are registered for sale under this prospectus, and 395,280 shares that Fisher Capital Ltd. has the right to acquire upon exercise of outstanding warrants. The warrants may not be exercised if after giving effect to such

exercise the holder would have acquired over the sixty day period prior to exercise and as a result of such exercise, in excess of 10.00% of the outstanding shares of our common stock following such exercise.

(5) Includes 380,000 shares of common stock held by Wingate Capital Ltd., all of which are registered for sale under this prospectus, and 242,269 shares that Wingate Capital Ltd. has the right to acquire upon exercise of outstanding warrants. The warrants may not be exercised if after giving effect to such exercise the holder would have acquired over the sixty day period prior to exercise and as a result of such exercise, in excess of 10.00% of the outstanding shares of our common stock following such exercise.

## PLAN OF DISTRIBUTION

We will not receive any proceeds from the sale of the shares. The shares are being offered on behalf of the selling stockholders. The shares may be sold or distributed from time to time by the selling stockholders, or by pledgees, donees or transferees of, or other successors in interest to, the selling stockholders, directly to one or more purchasers (including pledgees) or through brokers, dealers or underwriters who may act solely as agents or may acquire shares as principals, at market prices prevailing at the time of sale, at prices related to such prevailing market prices, at negotiated prices, or at fixed prices, which may be changed.

The sale of the shares may be effected in one or more of the following methods:

- on any national securities exchange or quotation service on which our common stock may be listed or quoted at the time of sale, including the Nasdaq National Market;
- in the over-the-counter market;
- in negotiated transactions;
- in transactions otherwise than on such exchanges or services in the over-the-counter market;
- through the writing of (put or call) options, whether the options are listed on an option exchange or otherwise;
- through the settlement of short sales; or
- through a combination of such methods of sale.

In addition, any shares that qualify for sale pursuant to Rule 144 of the Securities Act may be sold under Rule 144 of the Securities Act rather than pursuant to this prospectus.

These transactions may include crosses or block transactions. Crosses are transactions in which the same broker acts as agent on both sides of the trade.

In addition, the selling stockholders or their successors in interest may enter into hedging transactions with broker-dealers who may engage in short sales of shares in the course of hedging the positions they assume with the selling stockholders. The selling stockholders may also sell shares short and deliver the shares to close out such short positions. The selling stockholders or their successors in interest may also enter into option or other transactions with broker-dealers that require the delivery by such broker-dealers of the shares, which shares may be resold thereafter pursuant to this prospectus.

The selling stockholders or their successors in interest may from time to time pledge or grant a security interest in some or all of the shares and, if the selling stockholders default in the performance of their secured obligation, the pledgees or secured parties may offer and sell the shares from time to time under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders may also transfer and donate some or all of the shares owned by them in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of the prospectus.

Each of the selling stockholders has advised us that it received the shares in the ordinary course of its business and at the time it received the shares it was not a party to any agreement or other understanding to distribute the shares, directly or indirectly.

Brokers, dealers, underwriters or agents participating in the distribution of the shares as agents may receive compensation in the form of commissions, discounts or concessions from the selling stockholders and/or purchasers of the shares for whom such broker-dealers may act as agent, or to whom they may sell as principal, or both (which compensation as to a particular broker-dealer may be less than or in excess of customary commissions).

The selling stockholders and any broker-dealers who act in connection with the sale of shares hereunder may be deemed to be "underwriters" within the meaning of the Securities Act, and any commissions they receive and proceeds of any sale of shares may be deemed to be underwriting discounts and commissions under the Securities Act. Neither 8x8 nor any selling stockholder can presently estimate the amount of such compensation. 8x8 knows of no existing arrangements between any selling stockholder, any other stockholder, broker, dealer, underwriter or agent relating to the sale or distribution of the shares. 8x8 has informed the selling shareholders that the anti-manipulative provisions of Regulation M promulgated under the Exchange Act may apply to their sales in the market.

## LEGAL MATTERS

The validity of the shares of common stock offered hereby will be passed upon by Wilson, Sonsini, Goodrich & Rosati, Professional Corporation, Palo Alto, California, counsel to 8x8, Inc.

## EXPERTS

The consolidated financial statements of 8x8, Inc. incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended March 31, 2001, have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in accounting and auditing.

We engaged Financial Strategies Consulting Group, LLC, an expert in providing independent company valuations, to value and issue a report concerning the intangible assets we acquired from U|Force, Inc. In Note 3 to our consolidated financial statements and in the Management's Discussion and Analysis section of our Annual Report on Form 10-K for the year ended March 31, 2001, which is incorporated in this Prospectus by reference, we note our reliance upon Financial Strategies Consulting Group's report in valuing the intangible assets acquired from U|Force, Inc.

We engaged American Appraisal Associates, an expert in providing independent company valuations, to value and issue a report concerning the intangible assets we acquired from Odisei S.A. In Note 3 to our consolidated financial statements and in the Management's Discussion and Analysis section of our Annual Report on Form 10-K for the year ended March 31, 2001, which is incorporated in this Prospectus by reference, we note our reliance upon American Appraisal Associates' report in valuing the intangible assets acquired from Odisei.

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**8x8, INC.**

**1,000,000 SHARES**

**OF**

**COMMON STOCK**

**PROSPECTUS**

**February , 2002**

**PART II**

**INFORMATION NOT REQUIRED IN THE PROSPECTUS**

**ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION**

The Registrant will pay all expenses incident to the offering and sale to the public of the shares being registered other than any commissions and discounts of underwriters, dealers or agents and any transfer taxes. Such expenses are set forth in the following table. All of the amounts shown are estimates except the Securities and Exchange Commission (SEC) registration fee.

SEC registration fee	\$ 217.49
Legal fees and expenses *	39,000.00
Accounting fees and expenses *	5,000.00
Miscellaneous expenses *	5,000.00
Total	\$ 49,217.49

\* Estimated

## ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

As permitted by Section 145 of the Delaware General Corporation Law, the Registrant's Amended and Restated Certificate of Incorporation, includes a provision that eliminates the personal liability of its directors for monetary damages for breach or alleged breach of their duty of care. In addition, as permitted by Section 145 of the Delaware General Corporation Law, Article VI of the Bylaws of the Registrant provides that: (i) the Registrant is required to indemnify its directors and officers and persons serving in such capacities in other business enterprises (including, for example, subsidiaries of the Registrant) at the Registrant's request, to the fullest extent permitted by Delaware law, including in those circumstances in which indemnification would otherwise be discretionary; (ii) the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required by law; (iii) the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding (except that it is not required to advance expenses to a person against whom the Registrant brings a claim for breach of the duty of loyalty, failure to act in good faith, intentional misconduct, knowing violation of law or deriving an improper personal benefit); (iv) the rights conferred in the Bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers and employees; and (v) the Registrant may not retroactively amend the Bylaw provisions in a way that is adverse to such directors, officers and employees.

The Registrant's policy is to enter into an indemnification agreement having the form filed as Exhibit 10.1 to Registration Statement No. 333-15627 with each of its directors and executive officers, that provide the maximum indemnity allowed to directors and officers by Section 145 of the Delaware General Corporation Law and the Bylaws, as well as certain additional procedural protections. In addition, the indemnification agreements provide that directors and officers will be indemnified to the fullest possible extent not prohibited by law against all expenses (including attorney's fees) and settlement amounts paid or incurred by them in any action or proceeding, including any action by or in the right of the Registrant, arising out of such person's services as a director or officer of the Registrant, any subsidiary of the Registrant or any other company or enterprise to which such person provides services at the request of the Registrant. The Registrant will not be obligated pursuant to the indemnification agreements to indemnify or advance expenses to an indemnified party with respect to proceedings or claims initiated by the indemnified party and not by way of defense, except with respect to proceedings specifically authorized by the Board of Directors or brought to enforce a right to indemnification under the indemnification agreement, the Registrant's Bylaws or any statute or law. Under the agreements, the Registrant is not obligated to indemnify the indemnified party:

- (a) if a court of competent jurisdiction, by final judgment or decree, shall determine that (i) the claim or claims in respect of which indemnity is sought arise from an indemnitee's fraudulent, dishonest or willful misconduct, or (ii) such indemnity is not permitted under applicable law; or
- (b) purchase or sale by an indemnitee of securities of the Registrant in violation of the provisions of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law; or
- (c) for any acts or omissions or transactions from which a director may not be relieved or liability under the Delaware General Corporation Law; or
- (d) with respect to proceedings or claims initiated or brought voluntarily by an indemnitee and not by way of defense, except (i) with respect to proceedings brought in good faith to establish or enforce a right to indemnification under the indemnification agreement or any other statute or law, or (ii) at the Registrant's discretion, in specific cases if the Board of Directors of the Registrant has approved the initiation or bringing of such suit; or
- (e) for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) which have been paid directly to an indemnitee by an insurance carrier under a policy of directors' and officers' liability insurance maintained by the Registrant; or
- (f) on account of any suit brought against an indemnitee for misuse or misappropriation of non-public information, or otherwise involving indemnitee's status as an insider of the Registrant, in connection with any purchase or sale by an indemnitee of securities

of the Registrant.

The indemnification provisions in the Bylaws and the indemnification agreements entered into between the Registrant and its directors and officers may be sufficiently broad to permit indemnification of the Registrant's directors and officers for liabilities arising under the Securities Act of 1933.

Under the Registration Rights Agreement (Exhibit 4.2 hereto), the Registrant has agreed to indemnify the selling stockholders and persons controlling the selling stockholders against certain liabilities, including liabilities under the Securities Act of 1933, and the selling stockholders have agreed to indemnify the Registrant, its directors, its officers and certain control and related persons against certain liabilities, including liabilities under the Securities Act of 1933.

## ITEM 16. EXHIBITS

4.1	Form of Amendment No.1 to the Series A and Series B Warrants, dated as of December 17, 2001, by and among 8x8, Inc., Fisher Capital Ltd. and Wingate Capital Ltd. (Incorporated by reference from Exhibit 4.1 of the Current Report on Form 8-K filed on December 17, 2001)
4.2	Registration Rights Agreement, dated as of December 13, 2001, by and among 8x8, Inc., Fisher Capital Ltd. and Wingate Capital Ltd. (Incorporated by reference from Exhibit 4.2 of the Current Report on Form 8-K filed on December 17, 2001)
5.1	Opinion of Wilson, Sonsini, Goodrich & Rosati, Professional Corporation
10.1	Redemption and Exchange Agreement, dated as of December 13, 2001, by and among 8x8, Inc., Fisher Capital Ltd. and Wingate Capital Ltd. (Incorporated by reference from Exhibit 10.1 of the Current Report on Form 8-K/A filed on January 30, 2002)
10.2	License Agreement dated as of January 24, 2000, by and between 8x8, Inc. and STMicroelectronics, Inc.
10.3	Development Agreement dated as of January 24, 2000, by and between 8x8, Inc. and STMicroelectronics, Inc.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Accountants
23.2	Consent of Counsel (included as Exhibit 5.1)
23.3	Consent of Financial Strategies Consulting Group, LLC, Independent Appraisers
23.4	Consent of American Appraisal Associates, Independent Appraisers
24.1	Power of Attorney (previously filed)

## ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- a. To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
- b. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
- c. to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that clauses (a) and (b) do not apply if the information required to be included in a post-effective amendment by such clauses is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.

That, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Santa Clara, State of California, on February 5, 2002.

**8X8, INC.**

By: /s/ JOE PARKINSON

Joe Parkinson

Chairman of the Board And Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons on the dates indicated in the capacities indicated.

Signature	Title	Date
<u>/s/ JOE PARKINSON</u> Joe Parkinson	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	February 5, 2002
<u>/s/ DAVID M. STOLL</u> David M. Stoll	Chief Financial Officer and Vice President, Finance (Principal Financial and Accounting Officer)	February 5, 2002
<u>/s/ BRYAN R. MARTIN</u> Bryan R. Martin	President, Chief Operating Officer and Director	February 5, 2002
Bernd Girod	Director	
<u>*</u> Guy L. Hecker Jr.	Director	February 5, 2002
Christos Lagomichos	Director	
<u>*</u> William Tai	Director	February 5, 2002



\*By: /s/ DAVID M. STOLL

David M. Stoll

Attorney-in-Fact

### INDEX TO EXHIBITS

<b>Exhibit No.</b>	<b>Description</b>
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4.2	Registration Rights Agreement, dated as of December 13, 2001, by and among 8x8, Inc., Fisher Capital Ltd. and Wingate Capital Ltd. (Incorporated by reference from Exhibit 4.2 of the Current Report on Form 8-K filed on December 17, 2001)
5.1	Opinion of Wilson, Sonsini, Goodrich & Rosati, Professional Corporation
10.1	Redemption and Exchange Agreement, dated as of December 13, 2001, by and among 8x8, Inc., Fisher Capital Ltd. and Wingate Capital Ltd. (Incorporated by reference from Exhibit 10.1 of the Current Report on Form 8-K/A filed on January 30, 2002)
10.2	License Agreement dated as of January 24, 2000, by and between 8x8, Inc. and STMicroelectronics, Inc.
10.3	Development Agreement dated as of January 24, 2000, by and between 8x8, Inc. and STMicroelectronics, Inc.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Accountants
23.2	Consent of Counsel (included as Exhibit 5.1)
23.3	Consent of Financial Strategies Consulting Group, LLC, Independent Appraisers
23.4	Consent of American Appraisal Associates, Independent Appraisers
24.1	Power of Attorney (previously filed)

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**EXHIBIT 5.1**

February 5, 2002

8x8, Inc.  
2445 Mission College Blvd.  
Santa Clara, CA 95054

**RE: Registration Statement On Form S-3/A3**

Ladies and Gentlemen:

We have examined the registration statement on Form S-3 to be filed by you with the Securities and Exchange Commission on or about February 5, 2002 (the "Registration Statement"), in connection with the registration under the Securities Act of 1933, of shares of Common Stock, to be sold by certain stockholders listed in the Registration Statement. As your counsel, we have examined the transactions taken and proposed to be taken in connection with the sale of such shares by such stockholders in the manner set forth in the Registration Statement.

It is our opinion that the shares are legally and validly issued, fully paid and nonassessable.

We are opining herein as to the effect on the subject transaction only of the federal laws of the United States, the General Corporation Law of the State of Delaware, and the internal laws of the State of California, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or, in the case of Delaware, any other laws or as to any matters of municipal law or the laws of any other local agencies within the state.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement, including the Prospectus constituting a part thereof, and any amendment thereto.

Very truly yours,

/s/ **WILSON, SONSINI, GOODRICH &  
ROSATI**

Wilson Sonsini Goodrich & Rosati  
Professional Corporation

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**LICENSE AGREEMENT**

THIS AGREEMENT is made as of January 24, 2000 (the "Effective Date") between 8x8, Inc., a corporation organized and existing under the laws of the State of Delaware (hereafter "8x8"), and ST Microelectronics, Inc., a corporation organized and existing under the laws of the State of Delaware (hereafter "ST").

## RECITALS

Whereas, ST is a global independent semiconductor company which designs, develops, manufactures and markets a broad range of integrated circuits and discrete devices based on semiconductors used in a wide variety of microelectronic applications, including telecommunication systems, computer systems, consumer products, automotive products and industrial automation and control systems.

Whereas, 8x8 has expertise in the design, development, manufacturing and marketing of products and technologies related to internet protocol telephony.

Whereas, ST desires to have access to intellectual property rights owned or controlled by 8x8.

NOW, THEREFORE, in furtherance of the foregoing Recitals and in consideration of the mutual covenants and obligations set forth in this Agreement, the Parties agree as follows:

1. Definitions

1. Unless the provisions of this Agreement otherwise provide, the following capitalized terms used in this Agreement shall have the meaning set out below.

1. Agreement shall mean the present license agreement, together with all Appendixes hereto, as the same may be hereafter amended, modified or supplemented from time to time.
2. Affiliates shall mean an entity controlling, controlled by, or under common control as of the Effective Date or thereafter during the term of this Agreement, with ST or 8x8 as the case may be, provided that such entity shall be considered an Affiliate only for the time during which such control exists. For purposes of this definition "control" shall mean ownership or control, either directly or indirectly, of greater than 50% of the voting rights of such entity.
3. Confidential Information shall mean the terms of this Agreement as well as any proprietary information and data of either Party, contained in written or tangible form which is marked as "Internal Use Only", "Proprietary", "Confidential", or similar words. One Party's, including its Affiliates ("Disclosing Party") Confidential Information shall also include its confidential information and data orally disclosed to the other Party including its Affiliates ("Receiving Party") if related to written material marked as confidential or otherwise identified as such during the course of the discussions. However, Confidential Information shall not include any data or information which:
  - a. Is or becomes publicly available through no fault of the Receiving Party;
  - b. Is already in the rightful possession of the Receiving Party prior to its receipt of such data or information;
  - c. Is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;
  - d. Is rightfully obtained by the Receiving Party from a third party or in the public domain;
  - e. Is disclosed with the written consent of the Party whose information it is; or
  - f. Is disclosed pursuant to court order or other legal compulsion, after providing prior notice to the Disclosing Party of the intended disclosure.
4. Closing Date shall mean the Closing Date as defined in the Common Stock Purchase Agreement between 8x8 and STMicroelectronics NV of even date herewith.
5. Customers shall mean a third party who purchases Products from Licensee.
6. Deliverables shall have the meaning set forth in the Development Agreement.
7. Development Agreement shall mean that certain development agreement executed on the same date herewith between the Parties.
8. Derivative shall mean a product which is modified from a pre-existing Product through a revision, translation, change in packaging, change in semiconductor process technology or any other change that does not affect a Product's form, fit and function.
9. Essential Patents. Shall have the meaning set forth in Section 6.3 below.
10. IP Rights shall mean all patents, patent applications, including with respect to patents any patent rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed, utility models issued or pending, registered and un-registered design rights, copyrights (including the copyright on software in any code), trade secrets and proprietary know-how, Mask Works and other similar statutory intellectual property or industrial rights, as well as applications for any such rights.
11. Licensee shall mean ST and its Affiliates.

12. Licensed Technology shall have the meaning set forth in Exhibit 2 and includes all IP Rights therein, now or hereafter owned or controlled by 8x8.
  13. Mask Works shall have the meanings set forth in section 901(a)(2) of the Semiconductor Chip Protection Law(s).
  14. Net Sale Price means the actual amounts invoiced by the Licensee to the Customers or authorized distributors less actual returns, packing charges, shipping charges, taxes, duties, and price protection adjustments. Provided when the Customer is a Licensee's authorized distributor, Net Sale Price means Licensee's price to such distributor net of price protection adjustments and the items referenced above.
  15. Parties shall mean ST and 8x8 together.
  16. Party shall mean one of the Parties.
  17. Product shall mean one or more integrated circuits to be manufactured by or for ST, using in whole or in part the Licensed Technology.
  18. Residual Information, means those portions of each Party's Confidential Information as may be retained in the memory of the other Party's and/or the other Party's Affiliates' employees, subcontractors, or sub-licensee as the result of such employee, subcontractor, or sub-licensee being exposed to such Confidential Information pursuant to and in accordance with the terms of this Agreement. Residual Information shall not include information which has been purposely committed to memory or documented, written, electronically stored or otherwise stored in some other tangible form by or for such employee, subcontractor or sub-licensee.
  19. Semiconductor Chip Protection Law(s) shall mean the semiconductor Chip Protection Act of 1984 in the United States and any associated regulations and any amendments or revisions to such law or regulations, or any corresponding law and regulations in a country other than the United States.
  20. 8x8 Software shall be as described in Exhibit 2
2. Exhibits. The exhibits hereto shall be taken, read and construed as essential parts of this Agreement and are incorporated herein by reference.
  3. Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be taken, read or construed as essential parts of this Agreement.
  4. Plural. Words applicable to natural persons include any body of persons, company, corporation, firm or partnership, corporate or incorporate, and vice versa. Words importing the masculine gender shall include the feminine and neuter genders, and vice versa. Words importing the singular number shall include the plural number, and vice versa.

## 2. License

1. Subject to the terms and conditions of this Agreement, 8x8 hereby grants to the Licensee, under 8x8's IP Rights and to the extent that 8x8 is legally entitled to grant rights thereto hereunder, a non-exclusive (except as set forth in the Development Agreement), irrevocable, worldwide, non-transferable license to use, operate, copy and modify, the Licensed Technology, to design, develop and have developed Product, make, have made, commercialize, sell and otherwise dispose of Product, and support and maintain such Product. This license includes the right to combine and integrate 8x8 Software with other software, firmware or programs.
2. Subject to the terms and condition of this Agreement and in addition to the rights granted in Section 2.1 above, 8x8 hereby grants to Licensee the right to:
  - a. distribute the 8x8 Software in object code form only and only for use on and bundled with Product or systems which contain the Product.
  - b. grant to its Customers a non-exclusive, non-assignable license to use the appropriate 8x8 Software to develop Product.
3. In the event that a Customer wishes to license the 8x8 Software in source code form, 8x8 agrees to negotiate in good faith on a case by case basis the terms and conditions under which such a license may be provided.
4. Except as otherwise provided under this Agreement, nothing herein entitles the Licensee to distribute the Licensed Technology except in conjunction with a Product.
5. 8x8 shall employ commercially reasonable efforts to deliver free of charge to ST the relevant Licensed Technology in accordance to the schedule attached as part of Exhibit 2.
6. To the extent that 8x8 and ST have entered in an agreement under which 8x8 is to provide ST with maintenance and support for the Licensed Technology, such support and maintenance will be as defined in Exhibit 1.
7. 8x8 agrees not to assert any of its IP Rights embodied in the Licensed Technology against Licensee with respect to Licensee's use of such Licensed Technology in accordance with the license rights and other terms of this Agreement.
8. In the event the Licensed Technology practices patents, patent applications, including with respect to patents any patent rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed ("Patents") by Licensee, Licensee agrees that it will not assert these Patents against 8x8 provided, however, that Licensee would have not been able to be aware of the infringement but for the disclosure of the Licensed Technology hereunder. In any event this non-assert clause applies only in favor of 8x8 and does not cover any third parties including customers or partners of 8x8. NOTWITHSTANDING ANYTHING TO THE CONTRARY, This non-assert clause is not assignable and will automatically terminate in the event of a change of control of 8X8. For purposes of this section, a change of control shall mean one transaction or a series of related transactions that results in a change of control through direct or indirect ownership of fifty percent (50%) or more of the outstanding shares of stock entitled to vote for the election of directors (other than restricted shares of stock).

## 3. Training

1. 8x8 agrees to train the Licensee regarding the use and functionality of the Licensed Technology. The number of employees subject to and the scope of such training will be agreed upon by the Parties on a case-by-case basis.

#### 4. Compensation

1. In consideration for the license, delivery and services and support provided by 8x8 under this Agreement, ST shall pay to 8x8 the royalties described in Exhibit 3 which are applicable on the Net Sale Price of each Product sold by Licensee during a quarter to a Customer or authorized distributor (For the avoidance of doubt, Sale of Product to 8x8, and ST's Affiliates are not subject to the royalties). Further, the Parties agree that the royalty shall only fall due in respect of a Product in die or single die packaged form and not in the overall price of a device into which a Product may be integrated. Only the initial sale of a Product shall be subject to a royalty. No royalty will accrue for any returns, warranty or other replacement. The Parties agree that a Derivative shall be deemed the same Product and consequently the royalty schedule will not reset for a Derivative sold by or for Licensee.
  1. The royalties for the Product which is the subject matter of the Development Agreement may be modified and replaced by the royalty schedule set forth in the Development Agreement. In such a case, the royalty schedule described in the Development Agreement will supersede and will not cumulate with the royalties set forth in Exhibit 3 hereto.
2. Royalty payment shall be made by ST to 8x8 within thirty (30) days of the last day of each calendar quarter. All payments made hereunder shall be made in United States currency, by wire transfer or other reasonable mutually agreed to payment means and to such bank account(s) indicated by 8x8 in writing from time to time. Licensee will provide, concurrent with each payment, an explanation of how the payment amount was calculated.
3. Royalties described in Exhibit 3 are exclusive of applicable excise, sales, use or other similar taxes, if any.
4. Any income or other similar tax which ST is required by law to pay or withhold on behalf of 8x8 with respect to any royalties payable to 8x8 under this Agreement shall be deducted from the amount of such royalties otherwise due, provided, however, that in regard to any such deduction, ST shall give 8x8 such reasonable assistance as may be necessary to enable or assist 8x8 to claim exemption therefrom, or credit therefor, and shall upon request furnish to 8x8 such certificates and other evidence of deduction and payment thereof as 8x8 may properly require.
5. 8x8 shall have the right for representatives of a firm of independent accountants who shall have signed an appropriate non disclosure agreement, to which ST shall not unreasonably object ("Auditors"), to make an examination and audit, by prior appointment agreed between the Parties, such agreement not to be unreasonably withheld, during normal business hours, not more frequently than once annually during the time ST is required to make royalty payments to 8x8 hereunder and for one year thereafter, of all records and accounts as may under recognized accounting practices contain information bearing upon the 8x8 royalties revenue and the number of Products sold by ST under this Agreement. The Auditors will report to 8x8 only upon whether the royalties paid to 8x8 by ST were or were not correct, and if incorrect, what are the correct amounts for the royalties. ST shall be supplied with a copy of or sufficient extracts from any report prepared by the Auditors. The Auditors shall (in the absence of clerical or manifest error) be final and binding on the Parties. Such audit shall be at 8x8's expense unless it reveals an underpayment of royalties of five percent (5%) or more in which case ST shall reimburse 8x8 for the costs of such audit, plus interest of 12% per annum on the deficiency from the time the royalty was due until paid.

#### 5. Representations and Warranties

1. 8x8 represents and warrants to ST that (a) to the best of its knowledge as of the Effective Date it has full power and authority to enter into this Agreement, (b) to the best of its knowledge as of the Effective Date the terms and conditions of this Agreement, and 8x8's obligations hereunder, do not conflict with or violate any terms or conditions of any other agreement or commitment to which 8x8 is a signatory or by which it is bound, (c) to the best of its knowledge as of the Effective Date it owned or controlled the Licensed Technology that will be licensed and delivered to Licensee under this Agreement and (d) it will defend and indemnify Licensee against any third party claims arising out of or related to a breach of these warranties and representations.
2. 8x8 shall use its best efforts to verify the completeness of the Licensed Technology delivered to Licensee hereunder. In the case there should be any mistake or omission in such Licensed Technology, 8x8 shall promptly support ST with corrected Licensed Technology, free of charge.
3. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, 8x8 MAKES NO WARRANTIES OR CONDITIONS, EXPRESSED, STATUTORY, IMPLIED, OR OTHERWISE, WITH RESPECT TO THE LICENSED TECHNOLOGY LICENSED HEREUNDER, AND 8x8 HEREBY DISCLAIMS THE IMPLIED WARRANTIES AND CONDITIONS OF, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO.

#### 6. Indemnification

1. Excluding claims asserting that the Licensed Technology infringes an Essential Patent as defined below in Section 6.3, and subject to Section 9 (Limitation of Liability), 8x8 shall indemnify and hold Licensee and their respective officers, directors, employees and agents (hereafter referred individually or collectively as "Licensee Indemnitees") harmless and shall pay all costs, damages, and reasonable attorneys' fees and expenses relating to Licensee Indemnitees defense resulting from any suit, claim, demand, or other action by a third party against Licensee Indemnitees based upon a finding that any Licensed Technology infringes the IP Rights of a third party ("Licensee Infringement Claim"), provided that: (i) Licensee gives written notice to 8x8 within ten (10) business days of notice of such Licensee Infringement Claim; (ii) ST allows 8x8 at its expense through attorneys of its own choice, to exclusively defend or control the defense of any Licensee Infringement Claim; and (iii) Licensee assists 8x8 in all reasonable aspects in such investigation and defense, and is reimbursed by 8x8 for all the reasonable costs incurred in collaborating in such investigation and defense. The foregoing indemnity

obligations shall specifically not apply to any claim excluded under Section 6.2 or 6.3 below. If, as a result of a Licensee Infringement Claim, Licensee Indemnitees are enjoined from using the Licensed Technology, or selling Products, 8x8 may in its sole discretion, (i) procure for Licensee Indemnitees the right to use the Licensed Technology under the same terms and conditions set forth in this Section 6.1 or (ii) provide Licensee Indemnitees with modified Licensed Technology that are non-infringing while still meeting substantially the same functional specifications as the Licensed Technology.

2. 8x8 shall have no obligation under Section 6.1 above for any Licensee Infringement Claim which results from: (a) the combination of a Product with other products if the Licensee Infringement would have not existed but for the combination; (b) the modification of the Licensed Technology by parties other than 8x8 (or not authorized by 8x8); (c) the Improvement (as defined in Exhibit 2 below) of the Licensed Technology by or for ST.
3. Essential Patents. Licensee acknowledges that the licenses granted herein to the Licensed Technology do not include third party patents, copyrights and trade secrets, that may be essential to the implementation of any industry standard functions realized by the Licensed Technology including but not limited to H.323, SIP, MGCP, G.711, G.722, G.723, G.726, G.728, G.729AB/E and V.17, V.27, and V.29 ("Essential Patents").
4. SECTION 6.1 STATES THE ENTIRE LIABILITY OF 8x8 AND THE EXCLUSIVE REMEDY OF ST WITH RESPECT TO ANY AND ALL INFRINGEMENT CLAIMS. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, ALL WARRANTIES OF NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARE HEREBY DISCLAIMED BY 8x8.

#### 7. Term and Termination

1. This Agreement shall become effective upon the Closing Date and shall continue unless terminated as herein provided.
2. This Agreement may be terminated by either Party upon notice if the other Party (i) breaches any material term or condition of this Agreement and fails to remedy the breach within thirty (30) days after being given notice thereof, (ii) becomes the subject of any voluntary or involuntary proceeding under the applicable national or state bankruptcy or insolvency laws and such proceeding is not terminated within sixty (60) days of its commencement.
3. In the event of termination of this Agreement for breach or bankruptcy as provided herein, the license rights of the non-terminated Party pursuant to Section 2 above shall survive such termination, and the license rights of the terminated Party pursuant to Section 2 above shall survive only to the extent required to protect the interest of existing, committed customers of the terminated Party, and in particular the terminated Party shall have the right to (i) complete and sell or otherwise dispose of any work-in-progress existing in its manufacturing plants at the time of termination, (ii) sell and otherwise dispose of any Product in stock, (iii) complete any orders for Product existing at the time of termination and (iv) continue to provide technical support to its customers.
4. Notwithstanding anything to the contrary herein, no expiration or termination of this Agreement shall diminish the rights of any customer who has purchased Product to continue to use and/or sell or otherwise dispose of the same.
5. Notwithstanding anything to the contrary herein, no expiration or termination of this Agreement shall relieve Licensee of its obligation to pay any sum due hereunder.
6. The provisions of Sections 1 ("Definitions"), 2 ("License") except for (a) Licensee's right to design, develop and have developed new Product if the termination is caused by Licensee's material breach, and (b) sub-section 2.7 if the termination is caused by 8x8's material breach, 3 ("Compensation"), 4 ("Representations and Warranties"), 6 ("Indemnification"), 7 ("Term and Termination"), 8 ("Confidentiality"), 9 ("Limitation of Liability") and 10 ("General Provisions") shall survive any termination of this Agreement.

#### 8. Confidentiality

1. The Receiving Party shall, during the term of the Agreement, and for a period of five (5) years thereafter, subject to the exclusions set forth in Section 1.1.3 ("Confidential Information"), hold all Confidential Information of the Disclosing Party in confidence, not disclose such Confidential Information to any third parties except those with a need to know in connection with or during the performance of this Agreement (including, as necessary, subcontractors) who have executed a confidentiality agreement with terms at least as restrictive with regard to the Disclosing Party's information as those set forth herein, and in general use the same degree of care to protect the confidentiality of the Disclosing Party's Confidential Information as it uses with respect to its own information of a similar nature.
2. Neither 8x8 nor Licensee shall use the other Party's Confidential Information for another or other purpose than for the purposes set forth in this Agreement.
3. Except as otherwise provided in Section 7.3 above, upon termination of this Agreement all of the Disclosing Party's Confidential Information and all copies thereof in the Receiving Party's possession or control shall be immediately returned to the Disclosing Party or destroyed by the Receiving Party at the Disclosing Party's instruction. The Receiving Party shall then certify the same in writing and that no copies have been retained by the Receiving Party, its employees, Affiliates, contractors, or other parties to whom such information is provided.
4. The Receiving Party acknowledges that the unauthorized disclosure of the Disclosing Party Confidential Information will cause irreparable harm and significant injury, the scope of which is difficult to ascertain. Accordingly, the Receiving Party agrees that the Disclosing Party shall have the right to an immediate injunction enjoining any such unauthorized disclosure.
5. Both Parties agree not to assert claims against the other Party and/or their employees, subcontractor or sub-licensee based on inadvertent or unintentional use of any Residual Information by the Party, their employees, subcontractor, or sub-licensee. Further, neither Party shall be restricted from carrying out independent

development in which such Residual Information is inadvertently or unintentionally used. This Section shall not be construed to convey any patent or copyright of either Party.

#### 9. Limitation of Liability

1. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS), CAUSED BY ANY BREACH OF ITS OBLIGATIONS TO THE OTHER ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
2. IN NO EVENT SHALL THE TOTAL LIABILITY OF 8x8 TO ST ARISING UNDER SECTION 6 "INDEMNIFICATION" HEREOF EXCEED THE TOTAL AMOUNT PAID BY ST TO 8x8 WITH RESPECT TO THE 8X8 BASED PRODUCT(S) CONTAINING THE IP RIGHTS SUBJECT MATTER OF THE CLAIM, PROVIDED THAT SUCH TOTAL AMOUNT SHALL NOT EXCEED FOUR MILLION U.S. DOLLARS (\$4,000,000).
3. IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY LOSS, DAMAGE OR LIABILITY ARISING FROM A BREACH OF THIS AGREEMENT, THE DEVELOPMENT AGREEMENT OR BOTH EXCEED A SUM OF TWO MILLION DOLLARS (\$2,000,000) PROVIDED THAT SUCH LIMIT SHALL NOT APPLY IN THE EVENT OF A WILLFUL MISUSE OR WILLFULLY UNLAWFUL DISTRIBUTION OF THE LICENSED TECHNOLOGY, AND PROVIDED THAT FOR ST SUCH LIMITATION SHALL NOT APPLY IN THE EVENT THAT ST FAILS TO PAY THE ROYALTIES AND THE NRE EARNED BY 8X8 AND DUE BY ST AS SET FORTH IN SECTION 8 OF THE DEVELOPMENT AGREEMENT.

#### 10. General Provisions

1. Assignment. This Agreement may not be assigned by either Party, nor any of such Party's rights or obligations hereunder, to any third party including without limitation through a U.S. Bankruptcy Code Chapter 11 reorganization, without prior written consent of the other Party (which shall not be unreasonably withheld). In the event that this Agreement is assigned effectively to a third party, this Agreement shall bind upon successors and assigns of the Parties hereto. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate provided that the assigning Party so notifies the non- assigning Party in writing and the assignee agrees to assume all of the obligations of the assigning Party under this Agreement. In the event that the assignee ceases to be an Affiliate, this Agreement will immediately be re- assigned to ST and ST will assume all obligations under this Agreement.
2. Affiliates. Both Parties acknowledge that the other party may or does conduct its business in whole or in part through Affiliates. Accordingly, both Parties agree that the rights and benefits granted to the other Party through this Agreement shall inure to the other Party and its Affiliates.
3. Force Majeure. Neither Party shall be liable to the other Party for failure of or delay in performance of any obligation under this Agreement, directly or indirectly, owing to acts of God, war, war-like condition, embargoes, riots, strike and other events beyond its reasonable control. In the event that such failure or delay occurs, the affected Party shall notify the other Party of the occurrence thereof as soon as possible and the Parties shall discuss the best way to resolve the event of force majeure.
4. Notices. All notices provided for in connection with this Agreement shall be given in writing and shall be effective (i) upon receipt, when served by personal delivery; or (ii) the next day following the date of transmittal when transmitted by facsimile; or (iii) on the third day following the date of transmittal when transmitted by express mail; or (iv) on the 7th day following the date of mailing when sent by registered airmail of the sender's country with postage prepaid, addressed to the Party as follows, or to a changed address as the Party shall have specified by prior written notice:

ST: ST Microelectronics, Inc. at 1310 Electronics Drive Carrollton, TX 75006 USA. Attention: General Counsel; and

8x8: 8x8, Inc. 2445 Mission College Blvd. Santa Clara, California 95054 Attention: Chief Financial Officer.

5. Waiver. The waiver by either Party of the remedy for the other Party's breach of or its right under this Agreement will not constitute a waiver of the remedy for any other similar or subsequent breach or right.
6. Severability. If any provision of this Agreement is or becomes, at any time or for any reason, unenforceable or invalid, no other provision of this Agreement shall be affected thereby, and the remaining provisions of this Agreement shall continue with the same force and effect as if such unenforceable or invalid provisions had not been inserted in this Agreement.
7. Press Release and Sales Documentation. Neither Party shall make any announcement or press release regarding this Agreement or any terms thereof without the other Party's prior written consent. However, either party is free to file with the SEC or other relevant government agencies any document required to be filed thereon advice of counsel (redacted in a form advised by counsel). Furthermore, in accordance with the guidelines to be provided by 8x8 and with 8x8 prior approval which shall not be unreasonably withheld, 8x8 authorizes ST to use the name, trademark or logo "8x8" in its marketing and sales documentation.
8. Amendment. No changes, modifications or alterations to this Agreement shall be valid unless reduced to writing and duly signed by the respective authorized representative of each Party.

9. **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California without respect to its conflict of law provisions.
10. **No Partnership.** In giving effect to this Agreement, no Party shall be or be deemed to be an agent or employee of another Party for any purpose, and that their relationship to each other shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership or a joint venture between the Parties. No Party shall have the right to enter into contracts or pledge the credit of or incur expenses or liability on behalf of the other Party.
11. **Entire Agreement.** This Agreement and the Development Agreement constitute the entire agreement between the Parties and supersede all prior proposal(s) and discussions relative to the subject matter of this Agreement and neither of the Parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided herein. The terms and conditions contained herein and the appendixes attached hereto constitute the entire agreement between the parties and shall supersede all previous communications either oral or written between the parties with respect to the subject matter hereof. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement.

**IN WITNESS THEREOF**, the Parties hereto have executed this Agreement on the Effective Date.

For ST Microelectronics, Inc.:		For 8x8, Inc.	
Name: <u>A. McK. Malone</u>		Name: <u>Paul Voois</u>	
Title: <u>Executive Vice President and CFO</u>		Title: <u>Chairman and CEO</u>	
Signature: <u>/s/ A. McK. Malone</u>		Signature: <u>/s/ Paul Voois</u>	

**EXHIBIT 1**

Maintenance and Support Policy.

Maintenance and support that is to be provided hereunder is as described below:

- 8x8 will provide ST with bug fixes, modifications, updates and incremental enhancements that are incorporated into any Licensed Technology releases made generally available during the active maintenance period to 8x8's customers under similar maintenance agreements. If and when such releases are made available to any 8x8 customer, 8x8 shall also inform ST of their existence, prepare and make available the releases to ST, without additional charge.
- 8x8 will provide ST with Improvements that are developed specifically for ST when available and as agreed to in the SOW.
- 8x8 will provide ST with reasonable technical support through 8x8's Application Engineering group, to assist ST to develop Product. Such support and response times will be consistent to that which 8x8 provides other customers under standard maintenance agreements and will be rendered from 8x8's Santa Clara, CA facility.
- ST will report errors to 8x8 by Email. 8x8 will apply reasonable effort to duplicate the reported error and identify any appropriate bug fixes or modifications.
- The Parties will mutually determine the priority of an error and 8x8 will use commercially reasonable efforts to respond to ST within time frames consistent with the error priority and consistent to response times 8x8 provides other customers under standard maintenance agreements with similar priority errors.
- If ST asks 8x8 for engineers or others to travel to ST's locations to support the Licensed Technology, and 8x8 agrees to do so (such agreement shall not be unreasonably withheld), ST and 8x8 will agree as to which Party will pay the reasonable costs associated therewith, including the labor costs for such personnel, travel, meals and lodging costs.

**Maintenance Fees**

The fee payable by ST to 8x8 for the maintenance and support described herein is as defined in the relevant Development Agreement Exhibits. Otherwise, to the extent that the Licensed Technology is used by ST in Products not associated with the Development Agreement, if any, an additional maintenance fee payable by ST to 8x8 will be applicable and will be negotiated by the Parties in good faith on a case by case basis.

**EXHIBIT 2**

Licensed Technology.

The Licensed Technology to be made available hereunder consists of the following:

- The 8x8 Software and the 8x8 DSP as described below, as they exist on the Effective Date or upon delivery.
- The Deliverables, upon delivery.
- All updates, new releases and new versions, enhancements, modifications, adaptations, translations, additions and derivative works (collectively referred to as "Improvement") of items 1 and 2 that are to be provided by 8x8, as agreed to under the



Development Agreement if and when available and upon delivery.

4. All updates, new releases and new versions, enhancements, modifications, adaptations, translations, additions and derivative works of items 1 that are made available to 8x8 customers who are under similar maintenance and support agreements as shown in Exhibit 1 within one (1) year of the Effective Date, if and when available and upon delivery.

Specifically excluded from the Licensed Technology is 8x8's Intraswitch hosted iPBX technology, 8x8's end point system level products and related technology and any modifications or enhancements to the Licensed Technology developed by 8x8 for a third party.

### 8x8 Software

The 8x8 Software incorporates the Call Code and the Audio Code as defined below. The 8x8 software shall include the applicable software or firmware owned or controlled by 8x8, in source code and object code format, applicable manuals, program description, design and implementation documentation and other related documentation.

The Call Code to be provided hereunder is in ANSI C and POSIX operating system compliant format or in a format as agreed to in the Development Agreement.

The Audio Code to be provided hereunder is 8x8 DSP firmware consisting of a mixture of 8x8 DSP assembly language and C or in a format as agreed to in the Development Agreement.

In addition to the Call Code and Audio Code described below, the 8x8 Software to be provided hereunder shall include any other embedded voice over internet protocol firmware functions controlled by 8x8 that, as mutually agreed to by the Parties, is essential to a Product associated with a Development Agreement.

<b>Call Code</b>	
<b>Function</b>	<b>Estimated Availability Date</b>
Call control applications	1Q00
MGCP (NCS 1.0) compliant call stacks	1Q00
SIP (RFC 2543)	3Q00
H.323V2 with H.245	1Q00
H.323V2 Annex F variant (pending ratification of standard)	2Q00
ASN.1 (included in H.323)	1Q00
RTP/RTCP	1Q00
POSIX OS and C library	1Q00
Audio I/F drivers	1Q00
DSP device drivers	1Q00
HTTP Webserver	1Q00
SNMP	3Q00
DNS/DHCP	1Q00
BOOTP/TFTP	1Q00

<b>Audio Code</b>	
<b>Function</b>	<b>Estimated Availability Date</b>
G.711	1Q00

G.722	1Q00
G.723.1 including Annex A	1Q00
G.726	1Q00
G.728	1Q00
G.729AB	1Q00
G.729E	1Q00
V.17, V.27, V.29 for T.38	3Q00
V.8/modem tone detection	3Q00
Acoustic echo cancellation	1Q00
G.165/G.168	1Q00
DTMF and other tone generation/detection	1Q00
AGC	1Q00
Comfort noise generation	1Q00
Silence suppression	1Q00

## 8x8 DSP

The 8x8 DSP is defined as the 8x8 VP7 DSP core with mutually agreed to modifications. The availability date will be as mutually agreed to. The 8x8 DSP information to be provided to ST will be sufficient to enable ST to implement a gate level version with which ST can perform layout, extract pre and post layout timing information for simulation and verification, integrate with other circuitry and fabricate prototypes and production units and includes the 8x8 DSP Design Kit which is defined as: the 8x8 DSP Verilog HDL RTL and behavioral description; any other applicable high-level models, behavior models, C-models, Verilog models, timing models; validation and test program vectors/simulation patterns; firmware development tools (assembler, linker and other utilities) and documentation relating to these items to the extent presently available and in its existing form

### EXHIBIT 3

#### Royalties

#### Royalty Schedule

<b>8x8 Intellectual Property</b>	<b>Per unit of Product for the first 1M unit of Products Licensee ships to Customers (As a percentage of the Net Sale Price)</b>	<b>Per unit of Product after Licensee has shipped 1M unit of Products to Customers (As a percentage of the Net Sale Price)</b>
Call Code	3.0%	2.0%
Audio Code	3.0%	2.0%
8x8 DSP	2.0%	1.5%

The royalty schedule will reset for each Product

Note:

8x8 DSP royalty applies per Product regardless of the number of 8x8 DSP cores per Product.

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**DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made as of January 24, 2000 (the "Effective Date") between 8x8, Inc., a corporation organized and existing under the laws of the State of Delaware (hereafter "8x8"), and ST Microelectronics, Inc., a corporation organized and existing under the laws of the State of Delaware (hereafter "ST").

## RECITALS

Whereas, ST is a global independent semiconductor company which designs, develops, manufactures and markets a broad range integrated circuits and discrete devices based on semiconductors used in a wide variety of microelectronic applications, including telecommunication systems, computer systems, consumer products, automotive products and industrial automation and control systems.

Whereas, 8x8 has expertise in the design, development, manufacturing and marketing of products and technologies related to internet protocol telephony.

Whereas, ST and 8x8 have entered on January 24, 2000 in a certain equity investment agreement and a certain license agreement.

Whereas, ST desires to collaborate with 8x8 to design and develop products that enable voice and other multimedia services over internet protocol networks.

NOW, THEREFORE, in furtherance of the foregoing Recitals and in consideration of the mutual covenants and obligations set forth in this Agreement, the Parties agree as follows:

1. Definitions

1. Unless the provisions of this Agreement otherwise provide, the following capitalized terms used in this Agreement shall have the meaning set out below.

1. 8x8 DSP shall have the meaning set forth in the License Agreement.
2. Agreement shall mean the present development agreement, together with all Exhibits hereto, as the same may be hereafter amended, modified or supplemented from time to time.
3. Affiliates shall mean an entity controlling, controlled by, or under common control as of the Effective Date or thereafter during the term of this Agreement, with ST or 8x8 as the case may be, provided that such entity shall be considered an Affiliate only for the time during which such control exists. For purposes of this definition "control" shall mean ownership or control, either directly or indirectly, of greater than 50% of the voting rights of such entity.
4. Audio Code is described in Exhibit 2 of the License Agreement.
5. Call Code is described in Exhibit 2 of the License Agreement.
6. Completion unless otherwise agreed to by the Parties in the SOW, shall mean the completion of Phase Three as set forth in Section 2.4.3 below or a date two (2) years after the date of Project Acceptance (in the case of the MTA-1 Project, the Effective Date) whichever is earlier.
7. Confidential Information shall mean the terms of this Agreement as well as any proprietary information and data of either Party, contained in written or tangible form which is marked as "Internal Use Only", "Proprietary", "Confidential", or similar words. One Party's, including its Affiliates ("Disclosing Party") Confidential Information shall also include its confidential information and data orally disclosed to the other Party including its Affiliates ("Receiving Party") if related to written material marked as confidential or otherwise identified as such during the course of the discussions. However, Confidential Information shall not include any data or information which:
  - a. Is or becomes publicly available through no fault of the Receiving Party;
  - b. Is already in the rightful possession of the Receiving Party prior to its receipt of such data or information;
  - c. Is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;
  - d. Is rightfully obtained by the Receiving Party from a third party or in the public domain;
  - e. Is disclosed with the written consent of the Party whose information it is; or
  - f. Is disclosed pursuant to court order or other legal compulsion, after providing prior notice to the Disclosing Party of the intended disclosure.
8. Closing Date shall mean the Closing Date as defined in the Common Stock Purchase Agreement between 8x8 and STMicroelectronics NV of even date herewith.
9. Customers shall mean a third party who purchases Products from Licensee.
10. Deliverables shall mean any Project and the results thereof including but not limited to design and information related thereto, technical descriptions, comments and related materials, applicable Licensed Technology, components or other item including the IP Rights herein developed or to be developed by a Party pursuant to a Project.

11. Exclusive Market shall be as described in Exhibit 6 as it relates to a Project.
12. Exhibits shall mean the exhibits 1 to 6 that are part of the Agreement.
13. Existing Technology shall mean that portion of the Licensed Technology either currently owned or hereafter developed by or for 8x8 independent of a Project and other 8x8 IP Rights either currently owned or hereafter developed by 8x8 that are not applicable to this Agreement or the License Agreement.
14. Fees shall mean the support and maintenance fee set forth in Exhibit 1.
15. MTA-1 Project shall mean that Project described in the agreed upon Project Plan set forth in Exhibit 2 ("Project Plan for the MTA-1 Project"), which shall be developed by the Parties pursuant to the SOW set forth in Exhibit 3 ("Statement of Work for the MTA-1 Project").
16. IP Rights shall mean all patents, patent applications, including with respect to patents any patent rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed, utility models issued or pending, registered and un-registered design rights, copyrights (including the copyright on software in any code), trade secrets and proprietary know-how, Mask Works and other similar statutory intellectual property or industrial rights, as well as applications for any such rights.
17. License Agreement shall mean that certain license agreement executed on the same date herewith between the Parties.
18. Licensed Technology shall have the meaning set forth in the License Agreement.
19. Mask Works shall have the meanings set forth in section 901(a)(2) of the Semiconductor Chip Protection Law(s).
20. Net sale Price means the actual amounts invoiced by the Licensee to the Customers or authorized distributors less actual returns, packing charges, shipping charges, taxes, duties, and price protection adjustments. Provided when the Customer is a Licensee's authorized distributor, Net Sale Price means Licensee's price to such distributor net of price protection adjustments and the items referenced above.
21. Ordinary Course Technology shall mean those portions of the Licensed Technology that 8x8 would have developed in its normal course of business irrespective of the relevant Project, including but not limited to such efforts as required to ensure that the Licensed Technology maintains compatibility with industry standards.
22. Parties shall mean ST and 8x8 together.
23. Party shall mean one of the Parties.
24. 8x8 Based Product shall mean one or more integrated circuits to be manufactured by or for ST, using in whole or in part the Licensed Technology, to be designed and developed jointly by the Parties pursuant to a Project.
25. Project shall mean specific joint design and development activities and an associated Project Plan, provided the Parties have Project Acceptance.
26. Project Plan shall mean the plan under which an associated Project would proceed and which shall include each of the elements set forth in Section 2.4.1 below. Each Project Plan will require the drafting and completion of new Exhibits associated with the Project to be undertaken.
27. Semiconductor Chip Protection Law(s) shall mean the semiconductor Chip Protection Act of 1984 in the United States and any associated regulations and any amendments or revisions to such law or regulations, or any corresponding law and regulations in a country other than the United States.
28. Statement of Work ("SOW") shall mean with respect to each Project, the description of work which shall define the responsibilities of the Parties in the design and development of the 8x8 Based Product including but not limited to performance and functional goals, cost sharing, milestones and, without limitation, similar items to those items included in Exhibit 3 ("Statement of Work for the MTA-1 Project").
29. ST Technology shall mean the technology owned or controlled by ST and further described in Exhibit 4.
2. Exhibits. The Exhibits hereto shall be taken, read and construed as essential parts of this Agreement and are incorporated herein by reference.
3. Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be taken, read or construed as essential parts of this Agreement.
4. Plural. Words applicable to natural persons include any body of persons, company, corporation, firm or partnership, corporate or incorporate, and vice versa. Words importing the masculine gender shall include the feminine and neuter genders, and vice versa. Words importing the singular number shall include the plural number, and vice versa.

## 2. Joint Development

1. 8x8's Responsibilities. 8x8 will undertake those development activities for which 8x8 is responsible in accordance with the terms of any SOW associated with a Project and in accordance with the terms hereof.
2. ST's Responsibilities. ST will undertake those development activities for which ST is responsible in accordance with the terms of any SOW associated with a Project and in accordance with the terms hereof.
3. Joint Development Responsibilities. The Parties will work together to perform, pursuant to the SOW(s), the engineering tasks required in connection with development of the 8x8 Based Product(s). In this regard, each of the Parties shall use commercially reasonable efforts to meet each milestone set forth in milestone schedules delineated in the relevant SOW(s) to the satisfaction of both Parties. In order to ensure the timely completion of each Project, the Parties will assign such personnel, facilities and resources as are necessary to accomplish the development activities according to the terms of the relevant Project Plan and associated SOW.
4. Project Stages. Other than the MTA-1 Project and the ST120 Project, for which the Parties have agreed to proceed in accordance with the Project Plan set forth in Exhibit 2 ("Project Plan for the MTA-1 Project" and "Project Plan for the ST120 Project"), the Parties are under no obligation to initiate any projects. However, once the Parties have agreement, in writing, to proceed in accordance with an associated Project Plan ("Project

Acceptance"), such project shall be deemed a Project and shall proceed accordingly. No discussions shall become a "Project" nor a binding obligation on either Party, until and unless the Parties have agreement, in writing, to proceed in accordance with an associated Project Plan. Each Project shall include the following three (3) phases:

1. Phase One. The Project Planning Phase. During the Project Planning Phase the Parties shall develop a Project plan which will include the following items:
  - a. Identification of 8x8 IP and ST IP
  - b. Definition of the 8x8 Based Product to be designed and developed;
  - c. Statement of Work;
  - d. Joint marketing and sales program for the 8x8 Based Product, if applicable; and

(e) Project specifications.

2. Phase Two. The Design and Development Phase. During the Design and Development Phase, the Parties shall commence the design and development of the 8x8 Based Product pursuant to the terms of the associated SOW. During this Phase ST will fabricate engineering samples of the 8x8 Based Product in accordance with the agreed-upon specifications.

3. Phase Three. The Validation Phase. During the Validation Phase, the Parties will produce the following Deliverables relative to the 8x8 Based Product pursuant to the terms of the associated SOW:
  - a. Perform field test and interoperability tests;
  - b. Develop customer support parameters;
  - c. Qualify the 8x8 Based Product for production;
  - d. Introduce the 8x8 Based Product into ST's manufacturing plant; and
  - e. Production samples of the 8x8 Based Product.

5. Costs. The costs associated with the various development tasks described in the above three phases will be assumed by the Party responsible for a given task and shared on a mutually agreeable basis when responsibility is joint.
6. Project Manager. With respect to each SOW, the Parties shall each name a project manager. The project managers will be responsible for the technical management of the SOW and shall make themselves available for meetings between the Parties on an as-needed basis to ensure the progress of such Project. The project managers shall have technical expertise related to the goals of the SOW. The project managers will monitor the overall progress of each SOW, and make recommendations to the Parties regarding any proposed additions, deletions or modifications to the Statement of Work.
7. Project Delays. Each Party shall promptly communicate to the other Party any and all difficulties that might materially affect the timely completion of any milestone set forth in the relevant SOW and where possible estimate the probable or actual impact to the aforesaid milestone resulting from such difficulties, and any actions which might favorably resolve such difficulties. To the extent the completion of any activity defined in an SOW and required to be performed by either Party is delayed by such Party, there shall be an extension equal to such delay in the target completion dates of all subsequent dependent activities set forth in the SOW.
8. SOW Change Orders. The Parties recognize that the design and development efforts described in a SOW might need to be revised over time. Absent written approval from the Parties, no change(s) that would substantially impact costs, functionality, scope of work, or milestone schedules (collectively "Major Modifications") shall be made to any SOW. Major Modifications to any SOW shall be reflected in a new version of the SOW, which will be appended to this Agreement. All proposed Major Modifications will be fully described in a Project change summary for consideration by both Parties, including any changes affecting the anticipated costs of the Project. All Major Modifications will be negotiated and agreed upon in writing prior to implementation.
9. Third party licenses. With respect to Deliverables to be delivered by a Party under a Project (the "Delivering Party"), the Delivering Party shall use reasonable commercial efforts to obtain under fair and reasonable terms and conditions satisfactory to the other Party, any third party license and support agreement for tools and software that are identified in the SOW as necessary for efficient completion of a Project.

### 3. Support and Maintenance of the 8x8 Based Product

1. For a period of six (6) months after the Completion of a relevant Project 8x8 will provide ST the support and maintenance for the 8x8 Based Product as described in Exhibit 1 of the License Agreement. At the latest within thirty (30) days after the end of this six (6) months period and upon payment of the Fees ST shall have the right to extend the support and maintenance for another twelve (12) months period, thereafter such support and maintenance will be automatically extended on a year-to-year basis upon payment by ST of the Fees before the end of the current year.

3.2 Upon ST's request 8x8 agrees to negotiate with Customers reasonable terms and conditions associated with direct support of the Customers. Such support shall include, without limitation, training, design-in support, software maintenance and upgrades.

### 4. Licensing of IP Rights

1. License of 8x8 IP Rights. The right for ST and its Affiliates to use the Deliverables owned or controlled by 8x8 is covered in Section 2 of the License Agreement.
2. License of ST IP Rights. ST grants to 8x8 a non-exclusive, worldwide, royalty-free license to use and modify, in accordance with the terms and conditions of a Project, the ST Technology to design and develop 8x8 Based Products.

## 5. Ownership

1. Original Ownership. All IP Rights owned or controlled by a Party prior to the Effective Date or prior to any Project Acceptance shall remain the property of such party throughout the term of this Agreement and thereafter.
2. 8x8 Sole Ownership. Except as set forth in Section 5.4 below, all IP Rights originated, discovered or developed by or for 8x8, shall be owned by 8x8.
3. ST Sole Ownership. All IP Rights originated, discovered or developed by or for ST shall be owned by ST. All Mask Work generated by the Parties, individually or collectively, pursuant to this Agreement shall be the property of ST. However, ST's ownership of the Mask Works shall not be deemed to give ST any ownership in any 8x8's IP Rights even though such 8x8's IP Rights may be fixed in those Mask Works.
4. Joint Ownership. With the exception of any ownership rights set forth in Sections 5.1 ("Original Ownership"), 5.2 ("8x8 Sole Ownership"), and 5.3 ("ST Sole Ownership") above, any IP Rights originated, discovered or developed jointly by both Parties ("Jointly Owned IP Rights") shall be jointly owned and each Party shall have the unrestricted right to use such Jointly Owned IP Rights without accounting to the other Party, including the right to license the Jointly Owned IP Rights without the prior written approval of the other Party.
  1. Patent Prosecution. Patent applications and other means of formal protection shall be filed in the joint names of the Parties with respect to any such jointly owned IP Rights which the Parties jointly deem to be worthy of seeking any such protection. Consistent with the laws of the countries involved, the Parties shall jointly determine the country of jurisdiction within which the first patent application or other such protection shall be filed and, which of the Parties shall be responsible for the preparation and filing of the patent application or other such application. The Parties shall also jointly determine which other countries of jurisdictions any such application shall be filed and which of the Parties shall be responsible for such other filing. If the Parties cannot agree as to whether a particular jointly owned IP Rights should be the subject of patent or other formal protection, or cannot agree upon the countries or jurisdictions within which such application shall be filed, either Party may, on its own, seek such patent or other protection in any desired country or jurisdiction, and the other Parties shall cooperate with the Party seeking such protection. Unless otherwise agreed, all patent applications or other formal protection, whether pursued by all Parties or by one Party, shall be jointly owned by all Parties and all Parties shall be responsible for paying one-half (1/2) of the total cost involved in preparing, filing, prosecuting, issuing and maintaining any such applications and any resulting patents or other protection. The Parties shall consult with each other no less than once per calendar year for the purpose of identifying jointly owned IP Rights for which protection should be sought, the countries of jurisdictions in which such protection should be sought and in equalizing the costs involved in such protection. In case a Party is not or no more interested in participating in a patent or patent application, it shall notify the other Party thereof, in writing, at the earliest practicable date, and shall forthwith relinquish to the other Party its rights to such patent or patent application, then the other Party shall have the right, at its expenses, to prosecute such application or maintain said patent or patent application. The relinquishing Party agrees, at the other Party's expenses, to co-operate fully with the other Party to assist the other Party in obtaining (by assigning all its rights title and interest in the application), maintaining, defending and renewing such patent or patent application. For the purpose of this Section 5.4 "joint" ownership with respect to inventions and copyrights shall be defined in accordance with the then-current United States patent law or copyright law, as applicable.
5. Derivative IP. All Improvements, modifications or derivatives created by either Party to its own IP Rights or the IP Rights of the other Party (collectively "Derivative IP") during the course of this Agreement, and in accordance with the licenses granted in Section 4 ("Licensing of IP Rights") above, shall be owned by the owner of the original IP Rights, but shall be licensed to the other Party in accordance with the licenses applicable to the underlying IP Rights as set forth in Section 4 ("Licensing of IP Rights") above.
6. Assignment. Each Party agrees to assign to the other as necessary all right title and interest in and to any IP Rights made or developed by such Party which is to be owned by the other Party pursuant to Sections 5.5 above, and further agrees to assist the other Party with any application for patent rights and any other means of formal protection and to do all commercially reasonable acts that may be required by the other Party in connection with such assignment or assistance. The Party entitled to the assignment and assistance will reimburse the other Party the reasonable cost incurred by such other Party in providing such assignment and assistance.

## 6. Exclusivity

1. Exclusive Market. 8x8 acknowledges and agrees that the 8x8 Based Products will be exclusively commercialized, sold or otherwise disposed, directly or indirectly by ST and/or its Affiliates in the Exclusive Market. Consequently, 8x8 agrees not to develop (solely or jointly) or have developed, except under this Agreement, manufacture, have manufactured, sell, commercialize or otherwise dispose of 8x8 Based Product in the Exclusive Market.
2. Development activity. Unless otherwise agreed to by the Parties in writing, 8x8 agrees that for a period of one year (12 months) after the date of Project Acceptance it will not engage in any development activity (by itself or with or for a third party) the result of which will be a product, with features substantially similar to the Product subject matter of the Project Acceptance, to be marketed in the Exclusive Market, as defined for a Project, in competition with the Product. The definition of substantially similar as it relates to a Product features is to be defined in each SOW. Nothing herein shall limit 8x8's rights to develop products (solely or for a third party) that are not to be marketed in the Exclusive Market.
3. Licensing. Unless otherwise agreed to by the Parties in writing, 8x8 agrees that for a period of six (6) months after Completion of a Project as defined hereunder, it will not license the Deliverables to a third party. However, nothing herein shall limit 8x8's rights to (a) use, dispose of and license to any third party the Ordinary Course Technology and the IP Rights in the Deliverables owned by 8x8 pursuant to Section 5.2 hereto, and (b) provide

reasonable technical support to the licensed third party similar to that described in the License Agreement Exhibit 1 so long as such support does not consist of joint development activities, that would violate the disposition of Section 6.2 above.

4. Nothing herein shall limit 8x8's rights to license the Existing Technology to any third party and to provide such third party maintenance and support similar to that described in the License Agreement Exhibit 1 so long as such support does not consist of joint development activities that would violate the disposition of Section 6.2 above.

## 7. Marketing and Sales

1. Marketing. 8x8 agrees to reasonably assist ST in the marketing of 8x8 Based Products, which assistance could include developing joint marketing materials, participating in trade shows, referring clients, and similar activities. 8x8 shall reasonably assist ST in field trials and other demonstrations of the 8x8 Based Products.
2. Press Releases. The Parties shall issue common press releases related to the execution of this Agreement, with regard to the Parties' relationship, and as the 8x8 Based Products subject matter of a Project are developed. The Parties may also issue their own separate announcements and press releases regarding this Agreement. Each such press release shall be subject to the review and approval of the other Party, such approval not to be unreasonably withheld or delayed. No pre-approval shall be required regarding press releases by either Party which relate solely to 8x8 Based Products, and not to the other Party nor to this Agreement. Otherwise, neither Party shall make any announcement or press release regarding this Agreement or any terms thereof without the other Party's prior written consent. However, either party is free to file with the SEC or other relevant government agencies any document required to be filed thereon advice of counsel (redacted in a form advised by counsel).
3. Sales of 8x8 Based Products. In accordance with the then current ST terms and conditions of sale or certain other terms and conditions as specifically agreed to in writing by an authorized representative of the Parties, 8x8 will have the rights to purchase 8x8 Based Products from ST and (a) sell such 8x8 Based Products in an 8x8 board system, subsystem, or similar applications in which case the 8x8 Based Products will not carry 8x8 trademark or logo or (b) resell such 8x8 Based Products in which case the 8x8 Based Products to be purchased will carry the 8x8 trademark or logo. 8x8 cannot resell the 8x8 Based Products on the Exclusive Market without ST prior written approval.
4. Under substantially the same terms as described in 7.3, and for the same quantities of 8x8 Based Products fabricated under the same manufacturing process, ST will grant to 8x8 the best price it makes available to its customers with respect to the 8x8 Based Products.

## 8. Royalties and Non-Recurring Engineering Charges ("NRE")

1. ST shall pay to 8x8 the royalties described and defined for each Project in Exhibit 5 and amendments thereof. The royalties to be paid shall be in accordance with the terms and conditions defined in Section 4 of the License Agreement and any other terms and conditions specified in Exhibit 5 relative to a specific Project.
2. In the event the Parties agree that NRE will apply to a Project, the amount and payment schedule of such NRE will be described in the relevant SOW. Unless otherwise agreed, NRE will be paid by ST within thirty (30) days from receipt of the relevant invoice.

## 9. Indemnification

1. The terms and conditions of the indemnification provided by 8x8 to ST and its Affiliates in the event the Deliverables licensed to ST under to this Agreement infringe the rights of a third party are set forth in Section 6 "Indemnification" of the License Agreement.

## 10. Term and Termination

1. Term. The Term of this Agreement shall begin on the Closing Date, and unless earlier terminated as hereinafter set forth, shall remain in force for an initial period of five (5) years, and shall automatically extend for additional one (1) year periods unless either Party gives notification of its intention not to renew within sixty (60) days of the expiration of the initial term or any renewal period.
2. Termination. Each Party may, in its discretion, upon written notice to the other Party, and in addition to its rights and remedies provided under this Agreement and at law, terminate this Agreement in the event of any of the following:
  1. Termination for Breach. Upon a breach by the other Party of any material provision in this Agreement and failure of the breaching Party to cure such material breach within thirty (30) days of written notice of such breach.
  2. Termination for Bankruptcy. In the event a Party becomes the subject of any voluntary or involuntary proceeding under the applicable national or state bankruptcy or insolvency laws and such proceeding is not terminated within sixty (60) days of its commencement.
3. Effect of Termination on joint development obligations. In the event that this Agreement is terminated for any reason, neither Party shall be required to engage in any further joint development under any Project. Any discussions in effect for which the Parties do not have Project Acceptance, will immediately cease and any Project(s) for which production samples have not been developed pursuant to Phase 3 at the time of the termination, shall terminate immediately unless the Parties otherwise agree, provided, however, that each Party shall deliver to the other within thirty (30) days of termination all Deliverables developed pursuant to such Project(s) as the of the date of termination.
4. Notwithstanding anything to the contrary herein, no expiration or termination of this Agreement shall relieve ST of its obligation to pay any sum due hereunder.
5. Survival. The provisions of Sections 1 ("Definitions"), 4 ("Licensing of IP Rights") except for ST's right to design, develop and have developed new Product if the termination is caused by ST's material breach, 5 ("Ownership"), 8 ("Royalties"), 9 ("Indemnification"), 10 ("Term and Termination"), 11 ("Confidentiality"), 12 ("Limitation of Liability") and 13 ("General Provisions") shall survive any termination of this Agreement.



## 11. Confidentiality

1. **Obligation of Confidentiality.** The Receiving Party shall, during the term of the Agreement, and for a period of five (5) years thereafter, subject to the exclusions set forth in Section 1.1.7 ("Confidential Information"), hold all Confidential Information of the Disclosing Party in confidence, not disclose such Confidential Information to any third parties except those with a need to know in connection with or during the performance of this Agreement (including, as necessary, subcontractors) who have executed a confidentiality agreement with terms at least as restrictive with regard to the Disclosing Party's information as those set forth herein, and in general use the same degree of care to protect the confidentiality of the Disclosing Party's Confidential Information as it uses with respect to its own information of a similar nature.
2. **Non-Use.** Neither 8x8 nor Licensee shall use the other Party's Confidential Information for another or other purpose than for the purposes set forth in this Agreement and the License Agreement.
3. **Expiration.** Except as otherwise provided in Section 7.3 of the License Agreement, upon termination of this Agreement all of the Disclosing Party's Confidential Information and all copies thereof in the Receiving Party's possession or control shall be immediately returned to the Disclosing Party or destroyed by the Receiving Party at the Disclosing Party's instruction. The Receiving Party shall then certify the same in writing and that no copies have been retained by the Receiving Party, its employees, Affiliates, contractors, or other parties to whom such information is provided.
4. **Injunctive Relief.** The Receiving Party acknowledges that the unauthorized disclosure of the Disclosing Party Confidential Information will cause irreparable harm and significant injury, the scope of which is difficult to ascertain. Accordingly, the Receiving Party agrees that the Disclosing Party shall have the right to an immediate injunction enjoining any such unauthorized disclosure.

## 12. Limitation of Liability.

1. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS), CAUSED BY ANY BREACH OF ITS OBLIGATIONS TO THE OTHER ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
2. EXCEPT AS SET FORTH IN SECTION 9.2 OF THE LICENSE AGREEMENT, IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY LOSS, DAMAGE OR LIABILITY ARISING FROM A BREACH OF EITHER THIS AGREEMENT, THE LICENSE AGREEMENT OR BOTH EXCEED A SUM OF TWO MILLION DOLLARS (\$2,000,000), PROVIDED THAT SUCH LIMIT SHALL NOT APPLY IN THE EVENT OF A WILLFUL MISUSE OR WILLFULLY UNLAWFUL DISTRIBUTION OF THE LICENSED TECHNOLOGY, AND PROVIDED THAT FOR ST SUCH LIMITATION SHALL NOT APPLY IN THE EVENT ST FAILS TO PAY THE ROYALTIES AND THE NRE EARNED BY 8X8 AND DUE BY ST AS SET FORTH IN SECTION 8 HERETO.

## 13. General Provisions

1. **Assignment.** This Agreement may not be assigned by either Party, nor any of such Party's rights or obligations hereunder, to any third party including without limitation through a U.S. Bankruptcy Code Chapter 11 reorganization, without prior written consent of the other Party (which shall not be unreasonably withheld). In the event that this Agreement is assigned effectively to a third party, this Agreement shall bind upon successors and assigns of the Parties hereto. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate provided that the assigning Party so notifies the non- assigning Party in writing and the assignee agrees to assume all of the obligations of the assigning Party under this Agreement. In the event that the assignee ceases to be an Affiliate, this Agreement will immediately be re- assigned to ST and ST will assume all obligations under this Agreement.
2. **Affiliates.** Both Parties acknowledge that the other party may or does conduct its business in whole or in part through Affiliates. Accordingly, both Parties agrees that the rights and benefits granted to the other Party through this Agreement shall inure to the other Party and its Affiliates.
3. **Force Majeure.** Neither Party shall be liable to the other Party for failure of or delay in performance of any obligation under this Agreement, directly or indirectly, owing to acts of God, war, war-like condition, embargoes, riots, strike and other events beyond its reasonable control. In the event that such failure or delay occurs, the affected Party shall notify the other Party of the occurrence thereof as soon as possible and the Parties shall discuss the best way to resolve the event of force majeure.
4. **Notices.** All notices provided for in connection with this Agreement shall be given in writing and shall be effective (i) upon receipt, when served by personal delivery; or (ii) the next day following the date of transmittal when transmitted by facsimile; or (iii) on the third day following the date of transmittal when transmitted by express mail; or (iv) on the 7th day following the date of mailing when sent by registered airmail of the sender's country with postage prepaid, addressed to the Party as follows, or to a changed address as the Party shall have specified by prior written notice:

ST: ST Microelectronics, Inc. at 1310 Electronics Drive Carrollton, TX 75006 USA. Attention: General Counsel; and

8x8: 8x8, Inc. 2445 Mission College Blvd. Santa Clara, California 95054 Attention: Chief Financial Officer.

5. **Waiver.** The waiver by either Party of the remedy for the other Party's breach of or its right under this Agreement will not constitute a waiver of the remedy for any other similar or subsequent breach or right.
6. **Severability.** If any provision of this Agreement is or becomes, at any time or for any reason, unenforceable or invalid, no other provision of this Agreement shall be affected thereby, and the remaining provisions of this Agreement shall continue with the same force and effect as if such unenforceable or invalid provisions had not been inserted in this Agreement.
7. **Amendment.** No changes, modifications or alterations to this Agreement shall be valid unless reduced to writing and duly signed by the respective authorized representative of each Party.
8. **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California without respect to its conflict of law provisions.
9. **No Partnership.** In giving effect to this Agreement, no Party shall be or be deemed to be an agent or employee of another Party for any purpose, and that their relationship to each other shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership or a joint venture between the Parties. No Party shall have the right to enter into contracts or pledge the credit of or incur expenses or liability on behalf of the other Party.
10. **Entire Agreement.** This Agreement and the License Agreement constitute the entire agreement between the Parties and supersede all prior proposal(s) and discussions relative to the subject matter of this Agreement and neither of the Parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided herein. The terms and conditions contained herein and the appendixes attached hereto constitute the entire agreement between the parties and shall supersede all previous communications either oral or written between the parties with respect to the subject matter hereof. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement.
11. **IN WITNESS THEREOF,** the Parties hereto have executed this Agreement on the Effective Date.

For ST Microelectronics, Inc.:		For 8x8, Inc.	
Name: <u>A.McK. Malone</u>		Name: <u>Paul Voois</u>	
Title: <u>Executive Vice President and CFO</u>		Title: <u>Chairman and CEO</u>	
Signature: <u>/s/ A. McK. Malone</u>		Signature: <u>/s/ Paul Voois</u>	

**MTA-1 PROJECT EXHIBIT 1**

Fees

The Fee for extended maintenance and support of the MTA-1 Project is \$200,000 per twelve (12) months of which \$100,000 is to represent non-refundable pre-paid royalties. \$150,000 is due within 30 days of the start of the extended maintenance period for which the Fee is due as specified in Section 3.1. The balance, representing the last \$50,000 of the pre-paid royalties, are due within six months of the start of the extended maintenance period for which the Fee is due.

**MTA-1 PROJECT EXHIBIT 2**

Project Plan for the MTA-1 Project

To implement a Multimedia Terminal Adapter ("MTA-1") design (including an integrated DOCSIS cable modem module) as defined by the CableLabs' PacketCable specification which is to include, without limitation, the following ("MTA- 1 Project").

1. Development of a platform that demonstrates PacketCable version 1.0 and version 1.1 (when finalized) telephony and that incorporates mutually agreed to 8x8 and ST standard semiconductor and modified firmware products ("Demonstration Platform").
2. Development of one or more, as mutually agreed to, MTA-1 reference designs that incorporate mutually agreed to and/or jointly developed chips and firmware ("Reference Design").
3. Development of a new voice over Internet protocol ("VOIP") chip to be incorporated into the Reference Design ("VOIP Chip"). The architecture of the VOIP Chip is to be mutually agreed to but is assumed to include, without limitation, the ST SH4 RISC core or another version of ST's SH RISC core ("SH Core"), a suitably modified version of the 8x8 VP7 DSP core, a DOCSIS cable modem module and other circuitry.
4. ST will be responsible for development and validation of the DOCSIS v1.1 compliant cable modem subsystem hardware and software for the Demonstration Platform and the Reference Design.
5. 8x8 will be responsible for the development of software, firmware and a hardware design of a VOIP subsystem for the Demonstration Platform; the VOIP firmware (including the Call Code running under a POSIX compliant operating system and the Audio Code) for the VOIP chip as incorporated in the Reference Design; and, implementation of a VOIP Chip compatible version of the 8x8 DSP core.
6. ST will be responsible for implementation and fabrication of an 8x8 DSP chip that is to be used for firmware development and in an initial Reference Design ("DSP Chip"), the VOIP Chip, and certain other components of the Demonstration

Platform and the Reference Design. 8x8 will provide reasonable technical support sufficient to assist in the DSP Chip and VOIP Chip development effort.

7. Assuming an Effective Date prior to January 24, 2000 the schedule for the implementation of the MTA-1 design is to include, without limitation and subject to change:
  1. A target date of one month after the Effective Date for completion of the SOW
  2. A target date of 2Q2000 for shipment to ST of the VOIP subsystem for the Demonstration Platform
  3. A target date of 1Q2000 for shipment to ST of the 8x8 DSP Design Kit as defined herein.
  4. A target date of 3Q2000 for shipment by ST to 8x8 of the DSP Chip.
  5. A target date of 4Q2000 for shipment to ST of the initial VOIP Chip firmware.
  6. A target date of 4Q2000 for initial shipment to ST's customers of a Reference Design based on the DSP Chip and other components.
  7. A target date of 2Q2001 for initial shipment to ST's customers of the VOIP Chip and a Reference Design based on the VOIP Chip.
8. Each party will participate in mutually agreed to industry sponsored interoperability and certification events (e. g. CableLabs) to ensure that the products are compatible with solutions from other vendors and with applicable standards.
9. The costs associated with the various development tasks will be assumed by the party responsible for a given task and shared on a mutually agreeable basis when responsibility is joint.
10. Neither party is obligated to make any efforts beyond the Completion date for the Project, provided that, in the event the MTA-1 Project is not completed as of the Completion date, the parties shall meet and will decide in good faith future actions related to the MTA-1 Project.

**MTA-1 PROJECT EXHIBIT 3**

**Statement of Work for the MTA-1 Project**

The SOW for the MTA-1 Project is to be executed and mutually agreed to within one (1) month of the Effective Date

**MTA-1 PROJECT EXHIBIT 4**

**ST Technology**

1. ST will provide 8x8 the appropriate SH Core (as of the Effective Date SH Core refers to SH4 core) based development platform, any ST specific firmware and technical support that will enable the efficient implementation of the Call Code and the Audio Code on the Demonstration platform, Reference Design, DSP Chip and VOIP chip.
2. ST will provide technical specifications of the ST Bus and other ST proprietary interfaces required for development of the VOIP Chip compatible version of the 8x8 DSP core;
3. ST will provide 8x8 the ST standard cell libraries, memory models/compiler, timing models, synthesis scripts and other tools sufficient for 8x8 to perform gate level synthesis, simulation and verification of a DSP Chip and VOIP Chip compatible version of the 8x8 DSP core.
4. ST will provide 8x8 the appropriate ST design tools and gate level implementation of the 8x8 DSP sufficient to enable verification and an early development simulation environment with which to begin development of the Audio Code.

**MTA-1 PROJECT EXHIBIT 5**

**Engineer Charges and Royalties**

There is no NRE relative to the MTA-1 Project. The royalty schedule for the MTA-1 Project is described below. The payment terms are as described in the License Agreement

**MTA-1 Project Royalty Schedule**

<b>8x8 Intellectual Property</b>	<b>Per unit of 8x8 Based Products for the first 1 million units of the 8x8 Based Products Licensee ships to Customers</b>	<b>Per unit of 8x8 Based Products for the next 1 million units after the initial 1million units of the 8x8 Based Products Licensee ships to Customers.</b>	<b>Per unit of the 8x8 Based Product for the next 1 million units after the initial 2 million units of the 8x8 Based Products Licensee ships to Customers</b>	<b>Per unit of 8x8 Based Products after Licensee has shipped 3 million units of 8x8 Based Products to Customers (As a</b>
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				<b>percentage of the Net Sale Price)</b>
Call Code	\$0.85	\$0.55	\$0.45	2.0%
Audio Code	\$0.85	\$0.55	\$0.45	2.0%
8x8 DSP	\$0.65	\$0.40	\$0.30	1.0%

The royalty schedule will reset for each Product

Notes:

1. The royalty amounts above in the rightmost column that are based on a percentage of the Net Sale Price are subject to a minimum royalty of \$0.44 for the Call Code, \$0.44 for the Audio code and \$0.22 for the 8x8 DSP applicable per unit of 8x8 Based Product that Licensee ships to Customers.
2. The royalty amounts above in the rightmost column that are based on a percentage of the Net Sale Price are subject to a maximum royalty of \$0.60 for the Call Code, \$0.60 for the Audio code and \$0.30 for the 8x8 DSP applicable per unit of 8x8 Based Product that Licensee ships to Customers.
3. 8x8 DSP royalty applies per 8X8 Based Product regardless of the number of 8x8 DSP cores per 8X8 Based Product.

### **MTA-1 PROJECT EXHIBIT 6**

#### **Exclusive Market**

The MTA-1 Project Exclusive Market shall mean the market relative to voice over IP applications for consumer terminals over hybrid fiber coax cable television networks.

### **ST120 PROJECT EXHIBIT 1**

#### **Fees**

The Fee for extended maintenance and support of the ST120 Project is \$200,000 per twelve (12) months of which \$100,000 is to represent non-refundable pre-paid royalties. \$150,000 is due within 30 days of the start of the extended maintenance period for which the Fee is due as specified in Section 3.1. The balance, representing the last \$50,000 of the pre-paid royalties, are due within six months of the start of the extended maintenance period for which the Fee is due.

### **ST120 PROJECT EXHIBIT 2**

#### **Project Plan for the ST120 Project**

To implement a ST DSP and ARM based voice over IP design ("ST120 Project") including a reference design based on the ST950 and the ARM7 ("ST950 Design") and a reference design based on the ST120 and the ARM7, or another mutually agreed to RISC processor ("ST120 Design").

1. 8x8 will provide technical assistance, as defined in the License Agreement Exhibit 1, sufficient to enable ST to modify or have modified on its behalf the Call Code for execution on the ST ARM7 core or another mutually agreed to RISC processor and the ST120 if and when appropriate.
2. 8x8 will provide sufficient technical support to enable the integration and verification of the ARM7 based Call Code with the ST950 DSP based audio subsystem for the ST950 Design and with the ST120 DSP for the ST120 Design.
3. ST will be responsible for implementation of the appropriate modifications to the ST950 DSP core firmware necessary for efficient integration with the ARM7 based Call Code for the ST950 Design.
4. 8x8 will be responsible for implementation of modifications to the Audio Code for execution on the ST120 DSP core.
5. ST will be responsible for implementation and fabrication of the board level ST950 Design.
6. 8x8 and ST will jointly design the board level ST120 Design.
7. ST will be responsible for implementation and fabrication of the board level ST120 Design.
8. 8x8 will provide sufficient technical support to enable the implementation and verification of the board level ST120 Design.
9. Assuming a Project Acceptance date prior to January 24, 2000 the schedule for the implementation of the ST120 Project design is to include, without limitation and subject to change:
  1. A target date of one week after the Project Acceptance date for 8x8 to send to ST the Call Code as it exists on the Effective Date.
  2. A target date of one month after the Project Acceptance date for completion of the initial SOW

3. A target date of 1Q2000 for ST's delivery of the ST120 and ST950 development tools including, but not limited to, the VLIW and other applicable compilers, debuggers, linkers and utilities.
4. A target date of 2Q2000 for ST's delivery to 8x8 of the ST120 development system.
5. A target date of 2Q2000 for initial Customer shipment of the ST950 Design.
6. A target date of 3Q2000 for shipment to ST of the initial implementation and of the ST120 compatible Audio Code consisting of some mutually agreed to subset thereof with additional functions, as agreed to, to be delivered in 4Q2000.
7. A target date of 4Q2000 for initial Customer shipment of the initial ST120 Design.
10. Each party will participate in mutually agreed to industry sponsored and other interoperability and certification events to ensure that the products are compatible with solutions from other vendors and with applicable standards.
11. Neither party is obligated to make any efforts beyond the Completion date for the Project, provided that, in the event the ST120 Project is not completed as of the Completion date, the parties shall meet and will decide in good faith future actions related to the ST120 Project.

### **ST120 PROJECT EXHIBIT 3**

#### **Statement of Work for the ST120 Project**

The SOW for the ST120 Project is to be executed and mutually agreed to within one (1) month of the Project Acceptance date.

### **ST120 PROJECT EXHIBIT 4**

#### **ST Technology**

1. ST will provide 8x8 the appropriate ARM, ST950 and ST120 based development systems and tools including any ST specific firmware and technical support that will enable the efficient implementation of the ST120 Project.

### **ST120 PROJECT EXHIBIT 5**

#### **Engineering Charges and Royalties**

- A. The Engineering Charges payable by ST to 8x8 for the ST120 Project is to be \$500,000 plus \$500,000 of non-refundable prepaid royalties that are to be credited toward future royalties otherwise due for shipment of the 8x8 Based Products that are the result of the ST120 Project. Both amounts are payable by ST to 8x8 prior to the start of development work.
- B. The royalty schedule and payment terms for the ST120 Project is as described in the License Agreement

### **ST120 PROJECT EXHIBIT 6**

#### **Exclusive Market**

There is no applicable Exclusive Market relative to the ST120 Project.

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**EXHIBIT 23.1**

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated May 4, 2001 relating to the financial statements and financial statement schedule, which appears in 8x8, Inc.'s (formerly Netergy Networks, Inc.) Annual Report on Form 10-K for the year ended March 31, 2001. We also consent to the references to us under the headings "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 5, 2002

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**EXHIBIT 23.3**

**CONSENT OF INDEPENDENT APPRAISERS**

We hereby consent to the use of our name in the "Experts" section in the Registration Statement on Form S-3 (File No. 333-75402) filed by 8x8, Inc.

/s/ Financial Strategies Consulting Group,  
LLC

Lafayette, California  
February 5, 2002

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**EXHIBIT 23.4**

**CONSENT OF INDEPENDENT APPRAISERS**

We hereby consent to the use of our name in the "Experts" section in the Registration Statement on Form S-3 (File No. 333-75402) filed by 8x8, Inc., describing the value as: In-process research and development - \$10,100,000.00; Workforce - \$200,000.00; and Goodwill - \$3,481,000.00.

American Appraisal Associates

By:/s/ Ronald M. Goergen, President and  
CEO

Milwaukee, Wisconsin  
February 5, 2002

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