

## EQUIPMENT SALES PRODUCT ANNEX

This Equipment Sales Product Annex, together with the applicable cover agreement (collectively, the "Agreement"), will govern CenturyLink's provision and Customer's receipt of customer premises equipment and associated materials and labor ("Equipment"). When attached to the applicable cover agreement, this annex supersedes the version posted at [http://about.centurylink.com/legal/rates\\_conditions.html](http://about.centurylink.com/legal/rates_conditions.html). Customer's purchase and use of Cisco SMARTnet Services is governed under the Cisco Service and Support Solutions terms and conditions available at [http://www.cisco.com/web/about/doing\\_business/legal/service\\_descriptions/index.html](http://www.cisco.com/web/about/doing_business/legal/service_descriptions/index.html) and not by the terms and conditions of the CenturyLink Centurion Maintenance Service Annex.

1. **PRICE.** Customer will pay the total price invoiced as specified in the Order. If Customer changes any Equipment type or location, Customer will notify CenturyLink in writing of such change and CenturyLink may change the price listed on the Order to conform to Customer's specifications. CenturyLink will base any additional charges on time and material costs CenturyLink incurs. Prices for installation and other products and services not specified in the Order but requested by Customer or necessary to complete the Order will be provided at CenturyLink's standard time and materials rates or at prices that the parties' authorized representatives mutually agree upon in writing from time to time. Discounts applied to any individual Order will not apply to subsequent orders.
2. **PAYMENT TERMS.** For orders placed under this Annex, Customer's use of financing options does not extend payment terms.
3. **FAILURE TO PERFORM.**
  - 3.1 **Pre-Delivery.** If Customer repudiates, gives notice of cancellation, or otherwise breaches this Annex prior to delivery of the Equipment, Customer will pay CenturyLink as liquidated damages, and not as a penalty, 25% of the purchase price or CenturyLink's out of pocket costs incurred as a result of Customer's cancellation, whichever is greater.
  - 3.2 **Post-Delivery.** If Customer breaches this Annex after delivery of the Equipment, CenturyLink may, in addition to any other remedies available to CenturyLink: (a) declare all sums due and payable immediately; (b) discontinue discounts related to Equipment; (c) cease installation or delivery or disconnect and deactivate Equipment until amounts due are paid; or (d) retake possession of Equipment and retain all sums paid by Customer as a setoff against expenses incurred.
  - 3.3 **Drop Ship.** Purchases where CenturyLink will not be providing installation ("Drop Ship") may not be cancelled following order placement without prior written authorization of CenturyLink or assignment of a return authorization number ("Call Tag Number").
4. **RISK OF LOSS AND TITLE.**
  - 4.1 **Risk of Loss.** Customer assumes the risk of loss and damage to the Equipment from the date of its delivery to the designated ship to address.
  - 4.2 **Title.** Title to the Equipment will pass from CenturyLink to Customer when Customer fully pays the total amount invoiced for the Order, including but not limited to the Equipment price, freight, any applicable taxes, or interest due on past due amounts.
5. **Security Interest.** Customer grants CenturyLink a purchase money security interest in the Equipment, together with all replacements, parts, additions, repairs and accessories incorporated in or affixed to the Equipment, and all proceeds of the sale of the Equipment, until all charges (including interest, if any) are paid in full. Customer will not pledge or otherwise encumber the Equipment until all such charges are paid in full. Customer will sign and deliver any documents reasonably requested by CenturyLink for the purposes of perfecting the security interest created by this Annex. The parties agree that the Equipment will remain personal property, not a part of the land or building, regardless of the manner of installation.
6. **DELIVERY, ACCEPTANCE, BILLING AND RETURN OF EQUIPMENT.**
  - 6.1 **Delivery Date.** All delivery dates are approximate. CenturyLink will use commercially reasonable efforts to deliver, or cause to be delivered, the Equipment by any reasonable delivery date specified in the Order.
  - 6.2 **Acceptance and Billing.** For CenturyLink-installed Equipment, Customer will have 7 days after installation to notify CenturyLink in writing of any material deficiencies in the order. Otherwise, any Order under this Annex will be deemed accepted after the 7-day period, and CenturyLink may invoice Customer for the Order. If Customer timely rejects the Order, CenturyLink will take prompt action to cure the deficiencies within a reasonable period of time under the circumstances.
  - 6.3 **Drop Ship Equipment.** If Customer fails to reject the Equipment within 15 days from the date of delivery, Customer will be conclusively presumed to have accepted the Equipment. Equipment may only be rejected for errors in order processing or for defects or deficiencies in the Equipment, and

only after Customer has contacted CenturyLink and received a Call Tag Number with instructions on how to complete the return.

- 6.4 Order Cancellation or Return of Equipment.** In CenturyLink's sole discretion, Equipment may be returned by Customer with prior approval and specific shipping instructions from CenturyLink, and must be in original manufacturer's boxes or packaging for CenturyLink to accept the return. In addition to all other applicable charges, Customer will pay CenturyLink a restock charge of 25% of the purchase price as liquidated damages, and not as a penalty, upon the return of Equipment if the return is due to a Customer ordering error or Customer's late cancellation of an order. Customer is responsible for any damage to the Equipment while in Customer's possession or during return shipment to CenturyLink.

## **7. CUSTOMER RESPONSIBILITIES.**

- 7.1 Preparation of Site.** At its own expense, Customer will prepare its site(s) to comply with Equipment manufacturer's or CenturyLink's installation and maintenance specifications. Customer warrants that its sites are free of asbestos (whether encapsulated or exposed) and other hazardous materials as defined by federal or state law. If this warranty cannot be made prior to placing an Order, CenturyLink may, in addition to any other legal or equitable remedies: (a) decline to make any equipment installations in areas known or suspected of containing hazardous materials; or (b) unilaterally make an adjustment to the purchase price to reflect any increased costs of performance because of known or suspected hazardous materials on the premises.
- 7.2 Permits.** Customer will obtain necessary consents, approvals, licenses, and permits for installation of the Equipment on Customer's premises. Customer will provide access to CenturyLink during all hours consistent with the requirements of installation.
- 7.3 Indemnity.** Customer will defend, indemnify and hold harmless CenturyLink, together with its officers, agents and employees, against all damages, claims, liabilities or expenses (including reasonable attorneys' fees, court costs, and allocated in-house counsel legal expenses) arising out of or resulting in any way from Customer's failure to fulfill Sections 6.1 and 6.2 above.
- 7.4 Electrical Wiring.** Customer acknowledges that foreign voltages and lightning effects on equipment can be significant during electrical storms. Accordingly, Customer is responsible, at its expense, for all ground wire connections to Customer's premises. Customer will also ensure availability of a separate electric source, circuits and power with suitable outlets. Customer is responsible for ensuring CenturyLink's access to concealed wiring and for the availability of proximately located AC power. Unless otherwise stated in the order, Customer will pay the cost of electricians or conduit if required.
- 7.5 Physical Access to Facilities.** During the period of installation and throughout the warranty or maintenance period, Customer will provide necessary openings and ducts for cable and conductors in floors and walls, and floor plans and/or prints showing the location of the openings and ducts. The floor plan and/or prints will also show the locations and types of Equipment to be installed.
- 7.6 Proper Use.** Customer will properly use Equipment and will not, nor will it permit or assist others to, use Equipment for any purpose other than its intended purpose, fail to maintain a suitable environment according to the manufacturer's specifications, or tamper with Equipment. If Customer fails to comply, Customer will release CenturyLink from its performance and liability obligations (including any warranty or indemnity obligations) to Customer under this Annex and Customer will pay CenturyLink all costs or damages CenturyLink incurs as a result of Customer's breach.
- 7.7 Non-CenturyLink Equipment.** CUSTOMER IS SOLELY RESPONSIBLE FOR THE COMPATIBILITY AND NON-INFRINGEMENT USE OF ANY EQUIPMENT NOT ACQUIRED FROM CENTURYLINK THAT IS ADDED TO, OR OTHERWISE USED IN CONJUNCTION WITH CENTURYLINK-PROVIDED EQUIPMENT. CUSTOMER'S USE OR COMBINATION OF NON-COMPATIBLE OR INFRINGING EQUIPMENT WILL, AT CENTURYLINK'S OPTION, VOID ANY REMAINING WARRANTY AS TO ANY ITEM OF CENTURYLINK-PROVIDED EQUIPMENT THAT IS ADVERSELY AFFECTED.

## **8. WARRANTIES.**

- 8.1 CenturyLink Installed.** Unless otherwise noted in writing and explicitly accepted by CenturyLink for a particular Order, the warranty for Equipment installed by CenturyLink and any associated software is limited to the manufacturer's warranty, if any. CenturyLink will provide warranty service for installed Equipment at the installation location consistent with CenturyLink's customary equipment maintenance policies for Customer's location and type of equipment. Warranty service excludes replacement of lost or stolen parts, damage due to negligence, parts or items consumed

under normal use, acts of God, or causes other than normal use, including modifications by Customer or maintenance performed by anyone not pre-approved in writing by CenturyLink.

**8.2 Drop Ship.** For Equipment not installed by CenturyLink, the warranty is limited to the manufacturer's warranty, if any. Customer must contact the Equipment manufacturer for any warranty repairs or replacement and bear the expense of shipping Equipment not installed by CenturyLink to the Equipment manufacturer for warranty repairs or replacement.

**8.3 EULAs.** The end-user license agreement ("EULA") for each of the following manufacturers may be viewed at:

Avaya: <https://support.avaya.com/helpcenter/getGenericDetails?detailId=C2009223142629795043>

Cisco [http://www.cisco.com/en/US/products/prod\\_warranties\\_listing.html](http://www.cisco.com/en/US/products/prod_warranties_listing.html)

## 9. LIABILITY FOR IP EQUIPMENT.

**9.1 Network Performance Assessment ("NPA").** In addition to other limitations of liability set forth in the Agreement, Customer accepts full responsibility for the impact of adding IP Equipment to its network. IP technology is inherently vulnerable and due to multiple factors outside of CenturyLink's control, CenturyLink does not ensure continued network reliability. CenturyLink recommends an NPA to assess Customer's data network readiness before transition of voice and video services from a separate TDM network to a converged packet or IP network. An NPA is only valid at the point in time when the assessment is conducted and minor Customer changes to the network can result in significant impacts to Quality of Service or performance capabilities of the IP Equipment. An NPA does not guarantee performance of any applications running in Customer's LAN/WAN and CenturyLink is not responsible for any loss or delay in such applications. CenturyLink is not liable for impacts to Customer's network as it relates to the convergence of voice and data.

**9.2 Changes Following IP Evaluation or Assessment.** Changes in Customer network following an NPA or installation of IP Equipment may impact the existing network or application requirements. Although analyzing the existing network helps identify hardware and software issues associated with the IP Equipment deployment, more CPU, memory, bandwidth or features may be needed to ensure Customer's system meets both IP Equipment and existing network requirements.

## 10. EQUIPMENT PROVIDED AS PART OF A BUNDLE.

**10.1** Under certain Service configurations, CenturyLink furnishes Equipment to Customers without requiring payment in full at the time of acquisition. CenturyLink applies a fixed portion of Customer's monthly recurring charges, shown as a single amount for the bundle of Service and Equipment, toward the purchase price of the Equipment.

**10.2** If Customer receives Equipment as part of a bundled Service (as specified in the applicable Agreement or Order), the following additional terms apply:

- A.** Section 4.2 of this Annex will read: "Title to the Equipment will pass to Customer upon installation and acceptance."
- B.** If Customer terminates Services provided under the Agreement before the end of the Term, CenturyLink will collect any amounts still owed for the Equipment under the general termination liability provisions of the Agreement.

## 11. EQUIPMENT PROVIDED AT NO COST.

**11.1** Under certain promotions, CenturyLink furnishes Equipment to Customers at no cost in exchange for certain commitments on term and type of Service associated with the Equipment.

**11.2** If Customer receives Equipment at no cost (as specified in the applicable Agreement or Order), the following additional terms apply:

- A.** Section 4.2 of this Annex will read: "Title to the Equipment will pass to Customer upon installation and acceptance."
- B.** If Customer terminates Services provided under the Agreement before the end of the Term, CenturyLink may charge Customer a pro-rata installation fee (based on CenturyLink's time and materials costs as of the installation date) and a pro-rata equipment purchase fee based on CenturyLink's list price for the Equipment at the time of installation in addition to any other termination liability assessed under the Agreement.