



# Order Terms and Conditions Agreement

## Trial Agreement for Service and Equipment (Prospective new Verizon Wireless customer)

This Trial Agreement ("Agreement"), between City of Powder Springs ("Customer") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") is for a term of 45 days beginning on ship date ("Trial Period") for the trial use of equipment ("Equipment") as detailed in the shipment confirmation email(s) and on the printed packing slip(s) ("Schedule A").

The following conditions shall apply to this Agreement:

**1. Equipment:** The wireless equipment ("Equipment") detailed on Schedule A is provided for the Trial Period. Such Equipment (a) may include prototype and pre-production equipment in advance of its being generally or commercially available; (b) may not be in final production form; and (c) may, along with its software, be altered or updated before becoming commercially available. Customer acknowledges receipt of the Equipment and agrees to return it in its original condition to Verizon Wireless on or before the end of the Trial Period. **Customer will be charged the full retail price for any Equipment (i) that is returned physically damaged, ordinary wear and tear excepted; (ii) not returned at the end of the Trial Period; (iii) if an Apple device, returned without Apple ID, Passcode, or the Find my iPhone feature removed; and (iv) if an Android device, returned without the Google ID removed.** Customer agrees that the subsequent receipt of any Equipment and Service on a trial basis shall be subject to the terms of this Agreement. Note: certain exceptions may apply to Federal government customers.

**2. Service and Mobile Telephone Number:** Within the applicable service areas, Verizon Wireless will provide wireless service ("Service"), as is necessary to effectuate this trial and at no cost to Customer for the term of Trial Period. There are no activation fees or early termination fees applicable to this trial. Service and calling features may not be available in all areas. Equipment may or may not work with other carriers' networks. Environmental or topographic conditions, and other factors beyond the control of Verizon Wireless, may cause disconnections or other problems with the Service. A Mobile Telephone Number ("MTN") activated for this trial is for temporary use by Customer until the end of the Trial Period only. Verizon Wireless retains all rights in any MTN and any MTN subject to this trial will be deactivated at the end of the Trial Period.

**3. Service Restrictions:** Service may be used only with the Equipment approved for this trial and cannot be used with any unapproved Equipment or applications, server devices or host computer applications or for any other unapproved use. Customer agrees not to seek to remove any restrictions intended to prevent any unapproved use, including restrictions that may have been programmed into the Equipment.

**4. Use and Comment:** Customer agrees to use the Equipment as it was intended to be used in connection with its business and report to Verizon Wireless its observations regarding the usefulness of the Equipment and Service to its business and employees. Any reports or observations that Customer provides to Verizon Wireless about the Equipment and Service become the exclusive property of Verizon Wireless and Customer disclaims any rights. The purpose of this trial is to provide for Customer's evaluation of Customer's specific use of the Equipment and will be considered in conjunction with other confidential evaluations. Verizon Wireless and the Equipment manufacturer are under no obligation to implement any comments, suggestions or recommendations made by Customer.

**5. Termination by Verizon Wireless:** To maintain or improve cellular service or to prevent fraud, Verizon Wireless reserves the right to deny or terminate Service, upon notice when reasonably practicable, to anyone who uses the Service in a prohibited manner or whose usage adversely impacts our network or network service levels. Verizon Wireless also reserves the right to terminate Service upon expiration of the Trial Period.

**6. Termination by Customer:** Customer may terminate this Agreement at any time by providing written notice to Verizon Wireless and returning all Equipment in accordance with the terms and conditions of section 1.

**7. Confidential Information:** Customer agrees that the Equipment, Equipment software, and any information concerning this trial, including any reports and observations, as well as any business practices of Verizon Wireless (including that of its affiliates, parents, and subsidiaries) is "Confidential Information" and shall be maintained in strict confidence and not be disclosed to any third party without the prior written consent of Verizon Wireless. Customer shall not disclose Confidential Information to any employees or agents except those individuals who have a need to know the Confidential Information in order to perform under this Agreement.

**8. Limitation of Liability:** Verizon Wireless shall not be liable to Customer, its employees, agents, or any third party for injuries to persons or property arising from Customer's use of the Service, any defect in the Equipment, or the installation, repair or maintenance of the Equipment by any parties who are not employees of Verizon Wireless, subcontractors of Verizon Wireless, or otherwise acting on Verizon Wireless's behalf. Verizon Wireless's performance shall be excused if caused by Equipment failure, acts of God, strikes, severe weather conditions, fire, riots, war, earthquakes, Equipment or facility shortage or any other causes beyond Verizon Wireless's reasonable control. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHICH ARE INCURRED BY THE OTHER PARTY AND WHICH ARISE OUT OF ANY ACT OR FAILURE TO ACT RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM OR OF THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES. IN NO EVENT SHALL VERIZON WIRELESS BE LIABLE FOR LOSSES, DAMAGES, OR CLAIMS ARISING OUT OF CUSTOMER'S USE OR ATTEMPTED USE OF 911 OR E911 SERVICE, NOR SHALL VERIZON WIRELESS BE LIABLE FOR CUSTOMER'S INABILITY TO ACCESS 911 OR E911 SERVICE.

**9. Governing Law and Choice of Forum:**

If Customer is a federal agency: This Agreement will be governed by and construed in accordance with United States federal law in federal government contracting fora, i.e., the Government Accountability Office, Civilian Board of Contract Appeals, and Court of Federal Claims.

If Customer is a state/local agency: This Agreement will be governed by and construed in accordance with applicable State law. Resolution of disputes by neutral arbitration shall be held in a location convenient to the parties and the American Arbitration Association pursuant to the Wireless Industry Arbitration rules.

**10. Independent Contractors.** Verizon Wireless controls the means, methods, places and time of its performance of this Agreement. The parties are independent contractors to one another, and no action taken pursuant to the terms of the Agreement creates an agency, partnership, association, joint venture, or other cooperative entity relationship between them. Nothing in the Agreement creates an employer-employee relationship between Customer and either a Verizon Wireless employee or any employee or agent of Verizon Wireless.

**11. Force Majeure:** Any failure of Verizon Wireless to perform hereunder shall be excused if caused by failure of a third-party wireless or telecommunications provider serving a particular area, power failure, national emergency, interference by any governmental agency, sanction, embargo, act of God, strike or other labor disturbance, fire, terrorism, riot, war, epidemic, or any other causes beyond Verizon Wireless's reasonable control.

**12. Waiver; Severability; Survival:** No provision of this Agreement shall be considered waived unless both parties agree in writing to such waiver. Either party's forbearance or delay in enforcing any right under this Agreement shall not be construed as a waiver of such right. If a court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. Termination of this Agreement shall not affect either party's accrued rights or obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after this Agreement has ended.

**13. No Warranties:** CUSTOMER ACKNOWLEDGES THAT VERIZON WIRELESS IS NOT THE MANUFACTURER OF THE EQUIPMENT PROVIDED FOR THIS TRIAL, AND CUSTOMER AGREES THAT VERIZON WIRELESS HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION OR QUALITY OF THE EQUIPMENT. WITH RESPECT TO VERIZON WIRELESS, CUSTOMER PURCHASES OR USES THE EQUIPMENT "AS IS." VERIZON WIRELESS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, OR BY THE USER OR MANUFACTURER THEREOF, OR BY ANY REPAIR, SERVICE OR ADJUSTMENT THERETO OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED UNLESS LOSS OR DAMAGE IS CAUSED DUE TO VERIZON WIRELESS'S WILLFUL MISCONDUCT.

**14. About This Agreement:** If another agreement for wireless service and equipment is in effect between Customer and Verizon Wireless, the terms of such other agreement shall apply to this Agreement to the extent the terms of the other agreement do not conflict with these terms. As the party signing this Agreement you represent that you have the legal capacity to enter into this Agreement and are authorized to bind Customer to the terms and conditions of this Agreement. Customer has no other rights under this Agreement except as specifically provided by law or in this Agreement. This offer is subject to change without notice and may be revoked by Verizon Wireless if not executed within 90 days of the above date.

**15. Important Information: Emergency 911 Calls.** A Customer engaged in a trial of One Talk, whose users have One Talk desk phones or who wish either to add One Talk Service to a tablet or to install the One Talk Mobile App on a smartphone, must enter or direct its users to enter the U.S. address where emergency service responders are to be sent if users call 911. Such information must be entered before any desk phone or the One Talk Service can be activated. Entering the same address for all devices may not be appropriate, and 911 addresses should be updated whenever the location of a device changes. (Customer can make 911 address changes for desk phones using My Verizon. Customer's users can go to their mobile devices' Settings to change the 911 address.) 911 calls made over a Wi-Fi connection when using the One Talk Service should be avoided; the 911 system may fail to recognize such calls, and such calls will not work if there is a broadband connection failure or electrical power outage. [Note: With a smartphone using the One Talk Mobile App, this is only the case if Wi-Fi is used to make a 911 call. If the Verizon Wireless Network is used, a user's smartphone's built-in capabilities will provide the location of that device.] Voice functionality, including the ability to make and receive 911 calls, will not be available during a broadband connection failure, power outage, or other service disruption when using a One Talk desk phone.

IN WITNESS WHEREOF, this Agreement has been duly executed by an authorized representative of the Customer.

**I Accept**

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Operated by

