

FILED
Court of Appeals
Division II
State of Washington
8/14/2019 11:24 AM

NO. 52544-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

AARON MARK HARRIER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01186-1

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly denied Defendant's motion to suppress evidence because the State did not disturb the Defendant's "private affairs" when the police opened six image files containing depictions of minors engaged in sexually explicit conduct provided to it by way of the Defendant's cloud storage provider.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Aaron Mark Harrier was charged by information with two counts of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct in the First Degree and three counts of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct in the Second Degree for knowingly possessing such image files between December 1, 2015 and March 7, 2016. CP 1-2. Prior to trial, Harrier filed a motion to suppress the evidence against him and the trial court, the Honorable Bernard Veljacic, denied the motion following a CrR 3.6 hearing. RP 4-29; CP 7-18, 91-94, 100-02. The trial court then crafted and entered the relevant findings of fact and conclusions of law as required by CrR 3.6. CP 100-02.

The parties proceeded to a stipulated facts bench trial. RP 30-35; CP 103-08. The trial court found Harrier guilty as charged. RP 35; CP 110-16, 127. The trial court sentenced Harrier to 46 months of total

confinement, but stayed the sentence pending this appeal. RP 63, 71; CP 126, 131-32. Harrier filed a timely notice of appeal. CP 146.

B. STATEMENT OF FACTS¹

Synchronoss Technologies is a company that provides cloud storage for Verizon Wireless subscribers. CP 9, 103-04. In other words, a person with a cellphone on the Verizon Wireless network can backup or store their cellphone's content, to include photographs and videos, on Synchronoss's internet based storage ("the cloud"). CP 9; *U.S. v. Crawford*, --- F.Supp.2d ----, 2019 WL 3207854, slip. op. at 2 (N.D. Oh. 2019).

Synchronoss, which automatically scans the files contained in its subscribers' cloud storage, discovered that six images with hash values² previously identified as being suspected child pornography had been uploaded to its servers on December 31, 2015. CP 9-10, 84, 103-04; *Crawford, supra*, slip op. at 2. Because of this discovery, and consistent

¹ To the extent that the facts in the Statement of Facts are not derived solely from the trial court's findings of fact, the additional factual information from the record and from the "Stipulated Facts on Non-Jury Trial" is still proper since "[a] trial court is not required to make findings of fact regarding every item of evidence introduced in the case." *In re Davis*, 152 Wn.2d 647, 680, 101 P.3d 1 (2004) (citations omitted); *State v. Mewes*, 84 Wn.App. 620, 622, 929 P.2d 505 (1997). Additionally, ER 201 permits judicial notice of a fact "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Concerned Friends of Ferry County v. Ferry County*, 191 Wn.App. 803, 825, 365 P.3d 207 (2015).

² Section C, *infra*, contains an explanation of what "hash values" are and how technology is utilized to identify suspected child pornography.

with its obligations under 18 U.S.C. § 2258A³, Synchronoss submitted a “CyberTip” to the National Center for Missing and Exploited Children (“NCMEC”) CyberTipline, which contained the six image files and the telephone number that was associated with the Verizon account that had uploaded the image files. CP 84, 104. NCMEC, which did not open or view the relevant images files, was able to determine that the phone number provided in the CyberTip resolved to a person residing in Vancouver, Washington. CP 73, 84, 104. NCMEC then forwarded its report, the CyberTip, and the six image files of suspected child pornography to law enforcement. CP 68-75, 84, 104.

Detective Jason Mills of the Vancouver Police Department opened and viewed the six image files without a warrant. CP 84-85, 104.

Detective Mills determined that each of the images constituted depictions of minors engaged in sexual activity. CP 84-85, 104-06. In February of 2016, Detective Mills obtained and served search warrants upon Verizon Wireless and Synchronoss Technologies. CP 88-90, 106. In turn, Verizon provided information confirming that Aaron Harrier was the “subscriber/account holder” for the phone number provided by

³ “Anyone engaged in ‘providing an electronic communication service or a remote computing service’ to the public in interstate commerce is required to report any known child pornography violation to an electronic tip line, where it is made available to law enforcement. *State v. Friedrich*, 4 Wn.App.2d 945, 949, 425 P.3d 518 (2018) (quoting 18 U.S.C. § 2258A).

Synchronoss in its CyberTip and Synchronoss provided a thumb drive, which contained account data, family pictures of Harrier, a photograph of a wallet displaying Harrier's Washington State Driver's License, and at least ten images files that "depicted nude or partially nude, prepubescent children engaged in penile-vaginal intercourse, oral intercourse, or digital intercourse with adults." CP 106.

Following the receipt of the above from Verizon and Synchronoss, the Vancouver Police Department obtained and executed a search warrant for Harrier's residence. CP 107. During the warrant service the police seized Harrier's cellphone. CP 107. "The phone was determined to be the same phone associated with the Verizon account and the Synchronoss files that were the basis of the search warrant." CP 107. Also, during an interview, Harrier admitted to law enforcement that "he had viewed images of minors engaged in sexually explicit conduct and that he had downloaded and/or saved images depicting minors engaged in sexually explicit conduct." CP 107. Finally, Harrier also admitted that he had used his cellphone to view the images and that he had no other access to the internet at his home. CP 107.

C. BRIEF TECHNOLOGY BACKGROUND

Companies that "engage[] in 'providing an electronic communication service or a remote computing service' to the public in

interstate commerce [are] required to report any known child pornography violation to an electronic tip line, where it is made available to law enforcement.” *Friedrich*, 4 Wn.App.2d at 949 (quoting 18 U.S.C. § 2258A); CP 9-10, 104. More specifically, once aware of an apparent violation, a company must submit a report to NCMEC through the CyberTipline “as soon as reasonably possible” and may include in the report (1) information relating to the identity of any individual who appears to have violated the law (2) information relating to when and how a customer or subscriber of a provider uploaded, transmitted, or received content relating to the report; (3) information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address; and (4) any visual depiction of apparent child pornography that include any digital files in which the depiction may be contained. 18 U.S.C. § 2258A(a)(1)(A)(i); 18 U.S.C. § 2258A(b)(1)-(5). Companies that fail to comply with the duty to make a report to the CyberTipline face financial penalties. 18 U.S.C. § 2258A(e).

Thus, in order to comply with federal law, companies that are considered an electronic communication service or a remote computing service employ technology and a technique known as “hashing” to detect and report child pornography. “A hash algorithm takes the binary code of a computer file and generates a unique signature (or “hash value”) for that

file.” Ben Adams, *What Is Fourth Amendment Contraband?*, 69 Stan. L. Rev. 1137, 1180–81 (2017) (citations omitted). “Hashing” is the technique by which the hash value of a file is compared to the hash value “of files known to be child pornography.” *Id.* (citations omitted); CP 9-10, 104.⁴ When “two nonidentical files are” compared by being “inputted into the hash program, the computer will output different results.” Orin S. Kerr, *Searches and Seizures in a Digital World*, 119 Harv. L. Rev. 531, 541 (2005). On the other hand, when “two identical files” are compared by being inputted into the hash program the computer “will generate identical output.” *Id.* For example:

No other file will have the same hash value as the wedding photo, except a file that is identical, bit-for-bit. If one altered the wedding photo by changing so little as one bit, the hash value of the photo would be different as well.

Richard P. Salgado, *Fourth Amendment Search and the Power of the Hash*, 119 Harv. L. Rev. F. 38, 39–40 (2005) (citations omitted).

Moreover, the “chance of two different inputs ‘colliding,’” i.e., of two different files having the same hash value, is “astronomically small.” *Id.* (citations omitted). Accordingly, the hashing technique has “been used to fight child pornography distribution, by comparing the hash values of

⁴ “Hashing,” of course, can be utilized to compare digital files in a non-child pornography context.

suspect files against a list of the hash values of known child pornography images currently in circulation.” *U.S. v. Reddick*, 900 F.3d 636, 637 (5th Cir. 2018); Adams, *supra*, at 1180-81; *Friedrich*, 4 Wn.App.2d at 951-52, 955-56 (crediting a detective’s averments that a “database of hash values for files suspected to be child pornography enables ISPs to automatically detect when files that have been identified as illicit pass through their system”); CP 9-10, 104.

Thus, some courts have held that “hash value comparison allows law enforcement to identify child pornography *with almost absolute certainty*, since hash values are specific to the makeup of a particular image’s data.” *Reddick*, 900 F.3d at 639. (emphasis added) (internal quotation omitted) (citations omitted); *Morales v. State*, --- So.3d ----, 2019 WL 2528912, slip. op. at 4 (Fla. Dist. Ct. App. 2019); *State v. Lizotte*, 2018 VT 92, 31, 197 A.3d 362, 374 (2018); CP 101 (Conclusions of Law No. 3-4). As a result, the hashing technique allows companies to “identify suspect material from enormous masses of online data, through the use of specialized software programs—and to do so rapidly and automatically, without the need for human searchers.” *Id.* at 636-37; *Friedrich*, 4 Wn.App.2d at 951-52.

ARGUMENT

I. The trial court properly denied Defendant’s motion to suppress evidence because the State did not disturb the Defendant’s “private affairs” when the police opened six image files containing depictions of minors engaged in sexually explicit conduct provided to it by way of the Defendant’s cloud storage provider.

A Fourth Amendment search does not occur unless “the individual manifested a subjective expectation of privacy in the object of the challenged search” and “society [is] willing to recognize that expectation as reasonable.” *California v. Ciraolo*, 476 U.S. 207, 211, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986) (citing *Katz v. U.S.*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). Article I, section 7, our constitutional analog, protects “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass.” *State v. Reeder*, 184 Wn.2d 805, 814, 365 P.3d 1243 (2015) (citations and internal quotation omitted). The corollary of which is that “[i]f a private affair is not disturbed, then there is no violation of article I, section 7.” *Id.* (citing *State v. Miles*, 160 Wn.2d 236, 244, 156 P.3d 864 (2007)).⁵

Moreover, a defendant has the “burden of proving a disturbance of his [or her] private affairs under article I, section 7.” *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998). To determine whether a privacy

⁵ Similarly, if a person does not have a reasonable expectation of privacy “in the object of the challenged search” there is no violation of the Fourth Amendment. *Ciraolo*, 476 U.S. at 211; *U.S. v. Ackerman*, 296 F.Supp.3d 1267, 1273 (D. Kan. 2017) (*Ackerman II*).

interest—a particular expectation of privacy that a citizen should be entitled to hold—exists under our constitution courts look to “what kind of protection has been historically afforded to the interest asserted” and to “the nature and extent of the information that may be obtained as a result of government conduct.” *Reeder*, 184 Wn.2d at 814; *State v. Brelvis Consulting LLC*, 7 Wn.App.2d 207, 229, 436 P.3d 818 (2018).

a. There is no privacy interest in contraband

“Contraband” is defined as an “object, the possession of which, without more, constitutes a crime.” *State v. Alaway*, 64 Wn.App. 796, 799, 828 P.2d 591 (1992) (quoting *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699, 85 S.Ct. 1246, 1250, 14 L.Ed.2d 170 (1965)). Because of its inherently criminal character, courts have consistently held that a citizen is not entitled to hold an expectation of privacy in contraband. *State v. Carter*, 151 Wn.2d 118, 126-27, 85 P.3d 887 (2004) (holding that a defendant could not claim “his private affairs were disturbed when he voluntarily placed the gun on a table in open view [and] . . . [t]he contraband nature of the gun was immediately apparent. . . .”); *State v. Courcy*, 48 Wn.App. 326, 332, 739 P.2d 98 (1987); *U.S. v. Jones*, 31 F.3d 1304, 1311 (4th Cir. 1994); *U.S. v. Jacobsen*, 466 U.S. 109, 123, 123 n. 23, 104, S.Ct. 1652, 80 L.Ed.2d 85 (1984); *Adams, supra*, at 1160-62; *Salgado, supra*, at 44. “Child pornography,” certain controlled

substances, and certain weapons are the paradigmatic examples of contraband where “possession is only lawful for government actors or specifically authorized organizations, meaning that there is no chance an individual will ever have a legitimate expectation of privacy in those materials—either possession is lawful (in which case it is not private) or possession is private (in which case it is not lawful). *Adams, supra*, at 1160-62, 1165.

b. Private searches vs. the private search doctrine

Neither the Fourth Amendment nor article I section 7 provide protection from “private searches” or require the “exclusion of evidence obtained from private citizens acting on their own initiative.” *State v. Clark*, 48 Wn.App. 850, 855, 743 P.2d 822 (1987) (citations omitted); *State v. Walter*, 66 Wn.App. 862, 867, 833 P.2d 440 (1992). In other words, “citizens do not retain a privacy interest in evidence of a crime obtained by a private actor and delivered to the police.” *State v. Eisfeldt*, 163 Wn.2d 628, 638 n. 9, 185 P.3d 580 (2008) (internal quotation omitted).

In contrast, the “private search doctrine” recognized under the Fourth Amendment is “inapplicable under article I, section 7 of the

Washington Constitution.” *Id.*⁶ “Under the private search doctrine a warrantless search by the police does not offend the Fourth Amendment if the search does not expand the scope of the private search.” *Id.* at 636. For example, if a private actor searched a suspect’s backpack and found drugs and then brought the backpack to the police, the police could search the backpack and seize the drugs without a warrant provided they did not expand the scope of the private actor’s search. This is not true under article I, section 7, i.e., the police officer’s search of the backpack would be unconstitutional and the drug evidence suppressed. *Id.* at 638. But on the other hand, and as explained above, “constitutional protections do not apply” if that same private actor removed the drugs from the backpack and delivered them to the police, i.e., the drug evidence would be admissible against the owner of the backpack. *Id.* at 638 n. 9.

c. The single purpose container doctrine

The “single purpose container” doctrine originated in footnote 13 of *Arkansas v. Sanders*, which states that:

[n]ot all containers and packages found by police during the course of a search will deserve the full protection of the

⁶ Both parties below advanced arguments under the “private search doctrine” and the trial court may have considered it an operative theory. RP 7-8, 13, 17, 20-21; CP 17, 93-94, 98-99, 101 (Conclusion of Law No. 5); Brief of Appellant at 7, 12-18 (Harrier also raises the doctrine on appeal). But application of the doctrine was not a necessary predicate for the denial of the suppression motion by the trial court nor is any role that the doctrine played in the trial court’s denial of the motion determinative for this Court since an appellate court can affirm on any grounds supported by the evidence and record. *State v. Johnson*, --- Wn.App.2d ----, 440 P.3d 1032, 1037 (2019).

Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.

442 U.S. 753, 764 n. 13, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979). For the doctrine to apply, the relevant “container must so clearly announce its contents, whether by its *distinctive configuration*, its transparency, or otherwise, that its contents are obvious to an observer.” *Robbins v. California*, 453 U.S. 420, 428, 101 S.Ct. 2841, 69 L.Ed.2d 744 (1981) (emphasis added).

To satisfy article I, section 7, there must be a “virtual certainty that the container, in the circumstances viewed, holds contraband, as if transparent. *Courcy*, 48 Wn.App. at 332. And while a police officer’s virtual certainty that the contents of a container are contraband “may often be [the] product of the observable features of [the] container,” e.g., transparency, “it need not always” be as “[a]lternative sources of information about the contents of a closed container can suffice to place those contents functionally in plain view.” Ben A. McJunkin, *The Private-Search Doctrine Does Not Exist*, 2018 Wis. L. Rev. 971, 1002 (2018); *U.S. v. Williams*, 41 F.3d 192, 197-98 (4th Cir. 1994). That is, information communicated following a private search, along with the contextual circumstances, can effectively transform an inconspicuous package into

“one of those rare single-purpose containers which ‘by their very nature, cannot support any reasonable expectation of privacy.’” *Texas v. Brown*, 460 U.S. 730, 750-51, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983) (Stevens, J., concurring) (quoting *Sanders*, 442 U.S. at 764 n.13); *See* *McJunkin*, *supra*, at 1002-04, 1010-11.

Courcy is instructive. 48 Wn.App. 326. There an officer contacted a suspect and asked for his identification. *Id.* at 327. When the suspect began to take out his driver’s license the officer noticed a “blue and black precisely folded paper ‘bindle’ in the folder and immediately recognized it as a receptacle for drugs, usually cocaine.” *Id.* The suspect tried to pull the bindle back to his chest, but after a brief struggle the officer obtained the bindle and opened it confirming “it contained a white powdery substance.” *Id.* The suspect later admitted the substance was cocaine. *Id.*

In reviewing the legality of opening the bindle, *Courcy* held that the case “falls within the ‘single purpose container’ doctrine” and that because the bindle “clearly announced that it contained contraband, any reasonable expectation of privacy as to its contents was lost.” *Id.* at 330-32. In reaching the conclusion that there was a “virtual certainty” the bindle contained contraband, *Courcy* relied on the officer’s training and

experience⁷, the “distinctive nature of this container” and the “defendant’s furtive gesture after it became apparent” that the officer had seen the bindle.” *Id.* at 332. Consequently, the officer’s opening of the bindle did not violate article I, section 7. *Id.*

Moreover, the single purpose container doctrine need not be limited to physical containers like gun cases or drug bindles, but instead can include digital, computer files. Michael Mestitz, *Unpacking Digital Containers: Extending Riley’s Reasoning to Digital Files and Subfolders*, 69 Stan. L. Rev. 321, 350-54 (2017)⁸. As Orin Kerr⁹ has commented:

If you know that a particular image has a particular hash, and you then have a file with that hash, then the information you have before you open the file “clearly announce[s] its contents . . . by its distinctive configuration” so that “its contents are obvious to an observer.” The contents “can be inferred by [the file’s] outward appearance,” at least if you take “appearance” to include the hash value of the file.

⁷ “Although Officer Cruz testified he had no formal police training related to drug identification, he had “on the job” training and observed bindles such as this during street arrests; in his experience, the bindle always contained drugs. In 3 years with the Yakima Police Department, he had personally made four or five cocaine arrests and in almost every case, cocaine was packaged in paper bindles like the one seen in the defendant’s transparent plastic identification holder.” *Courcy*, 48 Wn.App. at 329.

⁸ Mestitz notes that “[t]reating individual computer files as containers may provide a convenient way to conceptualize hash searches under the Fourth Amendment. After all, hash values are essentially a feature of particular files, and just like the physical qualities of a closed physical container, they may ‘betray the contents’ of a digital container for the purpose of the plain view exception.” Mestitz, *supra* at 353.

⁹ Professor of Law at the UC Berkeley School of Law.
<https://www.law.berkeley.edu/our-faculty/faculty-profiles/orin-kerr/>

Orin S. Kerr, *Opening a File Whose Hash Matched Known Child Pornography Is Not a 'Search,' Fifth Circuit Rules*, Lawfare (Aug. 18, 2018, 10:09 AM), <https://www.lawfareblog.com/opening-file-whose-hash-matched-known-child-pornography-not-search-fifth-circuit-rules>. (alterations in original) (quoting *Robbins*, 453 U.S. at 428); *Reddick*, 900 F.3d at 639.

Harrier's relies on *U.S. v. Ackerman (Ackerman I)* to support his contention that his suppression motion should have been granted, but his reliance is misplaced. 831 F.3d 1292 (10th Cir. 2016); Br. of App. at 14-15. For one, *Ackerman I* is a private search doctrine case, which does not apply in Washington. *Id.* at 1305-07. Second, in *Ackerman I* an investigator, in addition to opening the one image file with a hash value that matched the hash value of known child pornography, also opened an email and three attachments whose hash values *did not* correspond to known child pornography. *Id.* at 1306. Moreover, *Ackerman I* did not address the question of whether there would have been an unlawful search if the investigator "*hadn't* opened Mr. Ackerman's email but had somehow directly accessed (only) the (one) attached image with the matching hash value." *Id.* (emphasis in original). Finally, *Ackerman I* is not persuasive authority because after the case was remanded, the district court concluded that the "Defendant did not have a reasonable expectation

of privacy in his email or the four attached images at the time of NCMEC's search.” *Ackerman II*, 296 F.Supp.3d at 1272-73

Here, Harrier cannot meet his burden to show “a disturbance of his private affairs under article I, section 7.” *Young*, 135 Wn.2d at 510.

Synchronoss Technologies conducted a private search of Harrier’s files¹⁰, for which there is no constitutional protection, and located depictions of minors engaged in sexually explicit conduct, items that are contraband and in which there is no expectation of privacy under the Fourth Amendment or article I, section 7. *Eisfeldt*, 163 Wn.2d at 638 fn. 9. Synchronoss conducted this search using the “hashing” technique by which the hash value of Harrier’s files was compared to the hash value of files known to be child pornography. As noted above, “hash value comparison allows law enforcement *to identify child pornography with almost absolute certainty*, since hash values are specific to the makeup of a particular image’s data.”

¹⁰ Notably, those who seek to access the internet through internet service providers or electronic service providers must agree to that provider’s terms of service or customer agreement. This is common sense and a fact “not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER 201. These terms of service limit a user’s “objectively reasonable expectation of privacy” since they generally inform the user of the company’s requirement to provide “child pornography,” if discovered, to law enforcement and that the use of the company’s internet services for such unlawful means violates the “acceptable use policy.” See *Ackerman II*, 296 F.Supp.3d at 1271-73; see also Appendix A – Verizon Online Terms of Service (Effective April 19, 2015) at 3-4, 22, 26. Appendix A is provided for illustrative purposes only. The record before this Court is silent on Harrier’s terms of service through Verizon or Synchronoss and connecting a particular one to Harrier is outside the realm of ER 201.

Reddick, 900 F.3d at 639. (emphasis added) (internal quotation omitted) (citations omitted).

Synchronoss, upon making this discovery, submitted the legally required CyberTip to law enforcement via NCMEC.¹¹ And since “citizens do not retain a privacy interest in evidence of a crime obtained by a private actor and delivered to the police” whatever privacy interest Harrier can be said to have had in the contraband images (depictions of minors engaged in sexually explicit conduct) was terminated once the files were in the hands of the police. *Eisfeldt*, 163 Wn.2d at 638 fn. 9.

This is especially the case because under the single purpose container doctrine, to the extent the files themselves are containers rather than pure contraband, the hash values of the files combined with the information provided by Synchronoss concluding there had been a match made “virtually certain” that the files/containers “by [their] *distinctive configuration . . .* or otherwise” contained depictions of minors engaged in sexually explicit conduct. *Courcy*, 48 Wn.App. at 332, *Robbins*, 453 U.S. at 428 (emphasis added), Kerr, *Searches and Seizures, supra*; *Reddick*, 900 F.3d at 639. Thus, Detective Mills did not disturb Harrier’s private affairs or conduct a search under article I, section 7 or the Fourth

¹¹ Tips to NCMEC from service providers and from NCMEC itself are considered to be from “reliable sources.” *Millette v. U.S.*, --- F.Supp.2d ----, slip. op. at 6, 2018 WL 3478891 (D. Me. 2018) (citing cases).

Amendment when he opened the digital files attached to the CyberTip and confirmed that each of them was in fact a depiction of a minor engaged in sexually explicit conduct. And, accordingly, the trial court correctly concluded that because “only six files were submitted, which were reasonably inferred to be Child Pornography, there was no risk that other, non-contraband files of the Defendant would be searched absent a warrant.” CP 101 (Conclusion of Law No. 4).

II. Probable Cause Existed to Support the Issuance of the Warrants Even Absent the Descriptions of the Depictions.

“Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference” that evidence of the crime can be found at the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). In fact, probable cause itself “may be based on hearsay, a confidential informant’s tip, and other unscrutinized evidence that would be inadmissible at trial.” *State v. Chenoweth*, 160 Wn.2d 454, 475, 158 P.3d 595 (2007) (citing *State v. Huft*, 106 Wn.2d 206, 209-210, 720 P.2d 838 (1986)); *Franks v. Delaware*, 438 U.S. 154, 164-65, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). That these types of evidence can establish probable cause is unsurprising since “the concept of probable cause . . . requires not certainty but only sufficient facts and circumstances to justify a reasonable

belief that evidence of criminal activity will be found.” *Id.* (citation omitted).

a. The independent source doctrine

Under the independent source doctrine, evidence tainted by “unlawful police action is not subject to exclusion ‘provided that it ultimately is obtained pursuant to a valid warrant or other lawful means independent of the unlawful action.’” *State v. Betancourth*, 190 Wn.2d 357, 364-65, 413 P.3d 566 (2018) (quoting *State v. Gaines*, 154 Wn.2d 711, 718, 116 P.3d 993 (2005)). “The independent source doctrine recognizes that probable cause may exist for a warrant based on legally obtained evidence when the tainted evidence is suppressed.” *Id.* at 365. Therefore, reviewing courts are to uphold a search warrant unless the illegally obtained information in the search warrant affidavit was “*necessary* to the finding of probable cause.” *State v. Garrison*, 118 Wn.2d 870, 874, 827 P.2d 1388 (1992) (emphasis in original) (citations omitted); *State v. Coates*, 107 Wn.2d 882, 887-89, 735 P.2d 64 (1987). The independent source doctrine ensures that the State neither benefits from its unlawful conduct nor is it placed in a worse position than it otherwise would have occupied. *Gaines*, 154 Wn.2d at 720; *Betancourth*, 190 Wn.2d at 365, 371-72.

Our Supreme Court recently described the independent source doctrine in *Betancourth*:

In its classic form, the independent source doctrine applies when the State procures the challenged evidence pursuant to a valid warrant, untainted by prior illegality. In the first type of independent source scenario, police conduct an initial unwarranted search of a constitutionally protected area, during which they discover but do not seize incriminating items. Police later obtain a search warrant for the area and seize the evidence during the warranted search.

For example, in *Gaines*, the police performed an illegal warrantless search of the trunk of the defendant's car, during which officers saw what appeared to be the barrel of an assault rifle and numerous rounds of ammunition. Rather than seizing the items, officers immediately closed the trunk without disturbing the contents. The following day, the police sought a search warrant for the defendant's trunk, which included a single reference to the officer's observation of the weapon, as well as other evidence to establish probable cause. After obtaining the warrant and searching the vehicle, the police recovered the rifle and ammunition from the trunk of the defendant's car. We concluded that this conduct violated article I, section 7 and that the appropriate remedy was to strike all references to the initial illegal search from the warrant affidavit when assessing whether probable cause existed to issue the original warrant; we held that the evidence was ultimately seized pursuant to a lawful warrant.

190 Wn.2d at 368-69 (internal citations omitted).

Here, probable cause existed for the issuance of the warrants even assuming that Detective Mills performed an unlawful search of the image files provided by Synchronoss. CP 68-75. When striking out the descriptions of images viewed from the warrant affidavit the magistrate

was still left with the information from the CyberTip, and that this information with the associated files had been submitted from Synchronoss to NCMEC. CP 68-75. Given the reliability of the tip and the manner in which the files (contraband) are identified, the remaining information in the affidavit was more than enough “to justify a reasonable belief that evidence of criminal activity will be found.” CP 68-75; *Chenoweth*, 160 Wn.2d at 475. As even *Ackerman I* noted “we are confident that NCMEC’s law enforcement partners will struggle not at all to obtain warrants to open emails when the facts in hand suggest, as they surely did here, that a crime against a child has taken place.” 831 F.3d at 1309.

CONCLUSION

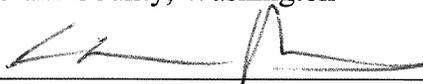
For the reasons argued above, Harrier’s convictions should be affirmed.

DATED this 14th day of August, 2019.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney
OID# 91127

APPENDIX A

PRINT >

Verizon Online Terms of Service

This Agreement is between you as our Subscriber and Verizon Online LLC, ("Verizon" or "Verizon Online") and it sets forth the terms and conditions under which you agree to use and we agree to provide the Service.

THIS IS A CONTRACT. PLEASE READ THESE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE AND CONTACT US IMMEDIATELY TO TERMINATE IT.

1. TERM AND ACCEPTANCE OF AGREEMENT; AGREEMENT TERMS GENERALLY INCLUDED.

The term of this Agreement will be either month-to-month or for the term specified for the Service or Bundled Service plan you select (the "Term"). The Term begins when you accept this Agreement and ends when you or we terminate this Agreement as permitted herein.

Acceptance by you of this Agreement occurs upon the earlier of: (a) your acceptance of this Agreement electronically during an online order, registration or when installing the Software or the Equipment; (b) your use of the Service; or (c) your retention of the Software or Equipment we provide beyond thirty (30) days following delivery. If you change Service plans, your term and monthly rate may change (depending on the plan you select), but all other provisions of this Agreement will remain in effect unless otherwise noted.

This Agreement consists of the terms below, plus (a) the specific elements of your Service or Bundled Service plan (including the plan's pricing, duration and applicable Early Termination Fee ("ETF"), all as described in the information made available to you when placing and confirming your order); (b) our Acceptable Use Policy (Attachment A) and Additional Services Terms (Attachment B); and (c) other Verizon policies referred to in this Agreement (including our Privacy Policy and our Website Terms of Use located at <https://www22.verizon.com/terms>), all of which are incorporated herein by reference. A current version of this Agreement and related policies are posted online at <http://myverizon.com/verizononlineterms> or <http://verizon.com/terms> ("Website"). You can also receive a paper copy of this Agreement by writing to Verizon, P.O. Box 11328, St. Petersburg, FL 33733, Attention: Customer Service.

2. DEFINITIONS AND CHANGES TO SERVICE.

1. "Broadband Services" means Verizon's FiOS or DSL-based Internet services (whichever applies). Verizon's DSL-based Internet service is also known as "High Speed Internet" ("HSI").
2. "Bundled Service(s)" means a combination or "bundle" of a Broadband Service with one or more other eligible Verizon services, including but not limited to Verizon FiOS TV, Verizon

Freedom Value or Verizon Freedom Essentials, FiOS Digital Voice or Verizon ONEBILL service.

3. "Content" means content provided by Verizon or its third party licensors or suppliers and accessible on the Service, including without limitation images, photographs, animations, video, audio, music, and text in any format.
4. "Equipment" means the modem, router and/or other equipment provided by Verizon for use with the Service. For the avoidance of doubt, the term "Equipment" shall include any router provided to you by Verizon that is either rented by you or otherwise required to be returned to Verizon upon termination or cancellation of Service, but shall not include any router that you purchase from Verizon or a third party.
5. "Service" means all Verizon dial-up, Broadband Service and Wi-Fi wireless Internet access services (where applicable), Software, Equipment, Content, Additional Services as defined in Attachment B, technical support, email, domain name server ("DNS") and related services (including functionality that enables the delivery of Verizon messages to your internet browser), Verizon Toolbar, Verizon Web Sites and other products and services provided by Verizon under the pricing plan applicable to your Service. The Service does not include voice telephony services.
6. "Verizon Web Site(s)" mean the sites located at verizon.net, verizon.com and myverizon.com, which are comprised of various web pages, tools, information, software, content, and features operated by Verizon.

3. REVISIONS TO THIS AGREEMENT.

The current version of the terms of this Agreement shall be available on www.verizon.com/terms. From time to time we will make revisions to this Agreement and the policies relating to the Service including to the provisions that govern the way that you and Verizon resolve disputes. We will provide notice of such revisions by posting revisions to the Website Announcements page, sending an email to the email address that you provide to receive communications from us (your "Primary Email Address"), or such other method provided for in Section 15 of this Agreement. You agree to visit the Announcements page periodically and to check your email box to review any such revisions. You also agree to notify Verizon immediately of any changes in your Primary Email Address. We will provide you with at least thirty (30) days' notice prior to the effective date of any increases to the monthly price of your Service or Bundled Service plan (excluding other charges as detailed in Sections 9.1(a)-(d)); revisions to any other terms and conditions shall be effective on the date noted in the posting and/or email we send you. Unless we provide otherwise, you accept the revisions and agree to abide by them by continuing to use the Service after the revisions are effective.

4. AUTHORIZED USER, ACCOUNT USE, AND RESPONSIBILITIES.

1. **Legal Authority.** You acknowledge that you are eighteen (18) years of age or older and that you have the legal authority to enter into this Agreement. You agree promptly to notify Verizon whenever your personal or billing information changes.
2. **Use of your Service and Account and Compliance with Applicable Authority.** You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and to pay for all activity associated with your account. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).
3. **Restrictions on Use.** The Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. Except as otherwise set forth in this Agreement, you may not resell, re-provision or rent the Service, (either for a fee or without charge) or allow third parties to use the Service via wired, wireless or other means. For example, you may not provide Internet access to third parties through a wired or wireless connection or use the Service to facilitate public Internet access (such as through a Wi-Fi hotspot), use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). If you subscribe to a Broadband Service, you may connect multiple computers/devices within a single home to your modem and/or router to access the Service through a single Verizon-issued IP address, and if available through the Service, you may permit guests to access the Internet through your Service's Wi-Fi capabilities. You also may not exceed the bandwidth usage limitations that Verizon may establish from time to time for the Service, or use the Service to host any type of server. Violation of this Section may result in bandwidth restrictions on your Service or suspension or termination of your Service.
4. **Dial-Up Accounts.** If you subscribe to Dial-up Service, your Service may be subject to log-off automatically and without notice if your account is idle for fifteen minutes. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from your computer system within a prescribed amount of time. Use of automatic re-dialer, script or other programs for the purpose of avoiding inactivity disconnects is a violation of this Agreement. You may only use your account for one log-on session per connection type at a time and you may not use more than one IP address for each log-on session.
5. **Broadband Accounts.** Additional User IDs provided for Broadband customers' email boxes may not be used as dial-up connections.

5. **PRIVACY POLICY; LEGAL COMPLIANCE.**

Personal information you provide to Verizon is governed by our Privacy Policy, which is posted on

the Website and is subject to change from time to time. Verizon reserves the right to provide account and user information, including email, to third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, monitoring of the Verizon network consistent with applicable law. In addition, Verizon is required by law to report any facts or circumstances reported to us, or that we discover, from which it appears there may be a violation of the child pornography laws. We reserve the right to report any such information, including the identity of users, account information, images and other facts to law enforcement personnel.

6. AVAILABILITY OF AND CHANGES TO SERVICE.

1. **Service and Bandwidth Availability and Speed.** The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for the Service even if initial testing showed that your line was qualified. We will provision qualified HSI lines at the maximum line rate available to your location based on our standard line qualification procedures, unless you have selected a level of service with a lower maximum line rate. Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration, your use of FiOS TV video on demand service, the condition of your telephone line and the wiring inside your location, among other factors. We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.
2. **Changes to your local voice telephony service.** If you change your local telephone company or discontinue your local telephone service, we may in our discretion either terminate your Service or continue to provide Broadband Service without local Verizon voice service at the then-current rates, terms and conditions applicable to your new Service plan and you agree to pay any new or higher monthly fee that may apply to your new Service plan. If we elect to terminate your Service under this Section 6.2, then we reserve the right to charge any ETF and to apply the Equipment return terms under Section 10.5.
3. **Conversion from DSL Service to Verizon FiOS Internet Service.** When Verizon is able to provision Service utilizing fiber optic technologies, we may in our discretion terminate your DSL Service and cease offering DSL Service to your location. In such case, we will offer you Verizon FiOS Internet Service at the then applicable rates and terms, which may differ from your previous DSL Service rates and terms. If you are on a Term Plan and Verizon terminates or ceases to offer service to your location under this Section 6.3, you

shall not be liable to pay the ETF.

4. **Changes to Service or Features.** Verizon reserves the right to change any of the features, Content, equipment authorized by Verizon for use in connection with the Service, or applications of the Service at any time with or without notice to you. This includes the portal services we may make available as part of the Service or for an additional charge.

7. SOFTWARE LICENSES AND THIRD PARTY SERVICES.

1. **Software for use with Service.** We may provide you, for a fee or at no charge, software for use in connection with the Service which is owned by Verizon or its third party licensors, providers and suppliers ("Software"). In some cases, the Software may enable Verizon to deliver messages to you. We reserve the right periodically to update, upgrade, change, or add new Software remotely or otherwise and to make related changes to the settings and software on your computer or Equipment, or any equipment authorized by Verizon for use in connection with the Service, and you agree to permit such changes and access to your computer, Equipment, and any such equipment authorized by Verizon for use in connection with the Service. You may use the Software only in connection with the Service and for no other purpose.
2. **End User License Agreement.** Certain Software may be accompanied by an end user license agreement ("EULA") from Verizon or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA.
3. **Software Not Accompanied by EULA.** For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by Verizon or its applicable third party licensor(s) to use the Software (and any corrections, updates and upgrades thereto). You may not make any copies of the Software. You agree that the Software is confidential information of Verizon or its third party licensors and that you will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Verizon or its third party licensors. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Verizon or its third party licensors continue to own all right, title and interest, including but not limited to all copyright, patent, trademark,

trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

4. **Time Period for Use of Software or Additional Services.** Your license to use the Software or any Additional Services will remain in effect until terminated by Verizon or its third party licensors, or until your Service is terminated. Upon termination of your Service, you must cease all use of and immediately delete the Software from your computer or other device.
5. **EULA of Third Party Provider.** If you subscribe to or otherwise use any third party services offered by Verizon, your use of such services is subject to the EULA of that third party provider. Violation of those terms may, in our sole discretion, result in the termination of your Service.
6. **Ownership of Intellectual Property Rights.** All title and intellectual property rights (including without limitation, copyrights, patents, trademarks and trade secrets) in and to the Verizon Web Sites (including but not limited to, related software, images, photographs, animations, video, audio, music, text, and content), are owned by Verizon, its affiliates or licensors. All title and intellectual property rights in and to the information and content which may be accessed through use of the Verizon Web Sites are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant you any rights to use such content, nor does it grant any rights to the Verizon Web Sites, other than the right to use the Verizon Web Sites according to the terms of the Agreement.
7. **Verizon Wi-Fi.** Verizon Wi-Fi Software and Services are provided by a third party provider.

8. VERIZON TOOLBAR.

1. **Verizon Error Assist.** As part of the installation process, the Verizon Toolbar will request your consent to receive Verizon Error Assist pages and to change your default web search provider settings.
2. **Usage Data.** The Verizon Toolbar may communicate certain non-personally identifiable usage information to Verizon and/or third party licensors to help Verizon and its licensors compile aggregate statistical usage data for the Verizon Toolbar including but not limited to data regarding the number of Verizon Toolbar installations, unique users and searches performed. Such aggregated statistical information will not include any information that individually identifies Verizon Toolbar users. The Verizon Toolbar collects user's IP addresses for the sole purpose of enabling proper geographic localization, such as presenting weather information based on a user's current location. While the IP address is stored for backup purposes, neither Verizon nor its licensors use this information for any purpose other than geographic localization. The Verizon Toolbar does not collect any

information that individually identifies users.

3. **Uninstalling the Verizon Toolbar.** Once installed, the Verizon Toolbar Software will automatically launch every time you execute the Microsoft Internet Explorer and/or Mozilla Firefox browser programs. You may uninstall the Verizon Toolbar Software at any time by clicking on "Settings" tool on the far right side of the Verizon Toolbar, and selecting "Uninstall" or by using the standard uninstall procedures included as part of your computer's operating system.
4. **Verizon Toolbar Software.** Verizon Toolbar Software is provided by Visicom Media, Inc., which is a third party beneficiary of this Agreement capable of enforcing its terms independently from Verizon.

9. **PRICING; BILLING; CHANGES TO SERVICE PLANS AND PAYMENT.**

1. **Prices and Fees.** You agree to pay the fees applicable to your Service or Bundled Service, either on a monthly or prepaid basis, as applicable, and to pay: (a) applicable taxes, (b) surcharges, (c) recovery fees, (d) telephone charges, (e) activation fees, (f) installation fees, (g) set-up fees, (h) equipment charges, (i) ETFs, and (j) other recurring and nonrecurring charges associated with the Service plan you have selected. The taxes, fees and other charges detailed in (a)-(d) above may vary on a monthly basis. Surcharges and recovery fees are not taxes and are not required by law, but are set by Verizon and may change. You also agree to pay any additional charges or fees applied to your account, including interest and charges due to insufficient credit or insufficient funds.
2. **Billing.** Non-recurring charges such as set up, activation and installation fees, and certain equipment charges, will be included in your first bill. Monthly Service and Bundled Service recurring charges will be billed one month in advance; any usage charges will be billed in arrears. Pre-paid pricing plans for Additional Services will be billed in advance. Based on your election and subject to our approval, Verizon or its agent will bill you directly, or bill your charge card or local Verizon telephone bill (where available). IF YOU ELECT TO BE BILLED ON YOUR VERIZON PHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE ALL SERVICE CHARGES INCLUDED ON YOUR PHONE BILL. IF YOU SUBSCRIBE TO A BUNDLED SERVICE PLAN, THEN ALL OF THE SERVICES INCLUDED IN THE BUNDLED SERVICE PLAN MUST BE BILLED ON YOUR VERIZON PHONE BILL. If you enroll in Verizon's Paperless Billing program, you agree to view and pay your bill electronically each month and to provide Verizon with current, accurate, complete, and updated information including your legal name, address, telephone number(s), email address and applicable payment data such as your bank account number. You agree to notify Verizon immediately of any changes in your email address or other registration or payment data. You will no longer receive a paper bill. Instead, each month you will receive an email notifying you that your bill is available online for viewing and payment at verizon.com. You must continue to pay your

paper bill until you receive your first e-mail notification that your bill is available online. If your electronic payment is rejected for any reason, Verizon may charge a return item fee (where permissible), cancel your enrollment in the Paperless Billing program and resume sending you paper bills. If you wish to revoke consent to paperless billing and receive a paper bill, select the "Account" tab on My Verizon, then select Account Overview, then select "Paperless Billing" and follow the posted instructions. If you use a third party bill payment vendor or distributor to receive and pay your Verizon bill, Verizon is not responsible for the accuracy and timeliness of your bill payments. If you de-enroll from receiving your Verizon bill at your home banking service provider's website, we will resume sending you a paper bill. Billing for Dial-up Service will automatically begin upon registration of your account. Billing for Broadband Services will automatically begin on the date provisioning of your Broadband Service is complete ("Service Ready Date") which will be the Due Date established by Verizon (after the Equipment has been delivered) if you are self-installing the Service. Billing for Additional Services will begin on your Service Ready Date if you are also ordering a new Broadband Service. Otherwise, billing for Additional Services will begin upon submission of your order, unless otherwise noted. We may, at our election, waive any fees or charges. If you cancel any component of a Bundled Services plan, the monthly charges for the remaining services on your account will automatically convert to the applicable existing, non-discounted month-to-month service rate.

3. **Plans with Minimum Terms.** If you choose a Service or Bundled Services plan with a minimum term commitment, you agree to maintain your Service for the term of that plan (a "Term Plan"). For Broadband Services, your Term Plan begins on the later of: (a) the date you change your existing Broadband Service plan to a Term Plan; or (b) your Service Ready Date; for Bundled Services, your Term Plan begins once all Bundled Services have been provisioned. You will begin receiving any discount associated with a Bundled Services plan once all Bundled Services have been provisioned. At the end of any Term Plan you may be given the option to select a new Term Plan. If you do not select a new Term Plan, your Service will automatically convert to a month-to-month Service plan at a monthly fee that may be higher than your current rate. If you select a new Term Plan, the terms of that plan will apply.
4. **Pre-paid Service Plans for Additional Services.** You may be given the option to select a pre-paid service plan for Additional Services ("Prepaid Service Plan") which will begin on the later of: (a) the date of your order, or (b) the date you change to the prepaid service plan. There will be no refunds for prepaid service plans. At the end of any Prepaid service plan, you may be given the option to select a new prepaid service plan. If you do not select a new prepaid service plan, your Service will automatically convert to the then-current month-to-month rate for the Additional Service.
5. **Data Charges.** You acknowledge and agree that you may also incur data charges or fees

from a wireless or internet service provider (which may be Verizon or a third party) for accessing online services or purchasing products and services through interactive options available through the Service. You are solely responsible for all charges or fees payable to Verizon or third parties, including all applicable taxes, and you are solely responsible for protecting the security of credit card and other personal information provided to third parties in connection with such transactions.

6. **Money Back Guarantee.** If we provide a money back guarantee ("MBG") for your Service, it will begin on your Service Ready Date. During this MBG period you may cancel your Service and receive a full refund of all monthly, one-time and equipment charges paid to Verizon (provided you return all Equipment in good working condition). If you fail to return the Equipment, an unreturned Equipment fee will apply. ETFs will not apply to Service terminated within the MBG period. The MBG does not apply to customers who change between or renew bundle, monthly, term or other pricing plans. The MBG is limited to one per Subscriber per Service type per Service address.
7. **Discontinuation of Service for Nonpayment.** We may discontinue your Service without notice if Service charges on your telephone bill or charge card are refused for any reason, or if you fail to make payment when due or to provide us with a new charge card expiration date before the existing date expires.
8. **Late Fees.** If any portion of your bill is not paid by the due date, Verizon may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. If your charges are billed by your Verizon local carrier, the late fee will be equal to the late payment charge that the local exchange carrier applies. Otherwise, the late fee will be the lesser of 1.5 % per month, or the highest rate permitted by law. If Verizon uses a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including attorneys' fees. If you fail to pay on time and Verizon refers your account(s) to a third party for collection, a collection fee will be assessed and will be due at the time of the referral to the third party. The fee will be calculated at the maximum percentage permitted by applicable law, not to exceed 18 percent.
9. **Local Telephone, Toll and Long Distance Charges.** VERIZON IS NOT RESPONSIBLE FOR ANY CHARGES, INCLUDING BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL OR TOLL CHARGES INCURRED WHEN YOU ACCESS THE SERVICE. YOU SHOULD CHECK WITH THE LOCAL PHONE COMPANY TO DETERMINE WHETHER A DIAL-UP NUMBER YOU HAVE SELECTED IS A LOCAL CALL FROM YOUR LOCATION AND WHETHER ANY CHARGES APPLY. VERIZON DOES NOT GUARANTEE THAT ANY DIAL-UP ACCESS NUMBERS WE PROVIDE WILL BE A LOCAL CALL FROM YOUR LOCATION. ADDITIONAL CHARGES, WHICH MAY BE SUBSTANTIAL, APPLY TO REMOTE DIAL UP ACCESS, WHICH IS AVAILABLE FROM CERTAIN LOCATIONS ONLY.

10. **Limitation on Special Pricing Promotions.** You may only take advantage of one special pricing promotion during any consecutive twelve (12)-month period. Eligibility for promotional offers may be contingent upon payment of all outstanding Verizon charges.
11. **Refundable Deposit.** We may require that you provide us with a refundable deposit, which will be specified at the time of your order. We may also require an additional deposit after activation of the Service if you fail to pay any amounts when due. Within ninety (90) days after termination of your Service, we will return your Subscriber Deposit, less any unpaid amounts due on your account, including any amounts owed for unreturned or damaged Equipment. Amounts held on deposit will not accrue interest except as required by law.
12. **Credit Related Matters.** We may evaluate your credit history before modifying or providing you Service. In order to establish an account with us and/or obtain or modify Service, we may obtain a report from a consumer credit agency or exchange information with our affiliates in connection with determining your creditworthiness. If you fail to pay your bill, we may submit a negative credit report to a credit reporting agency, which will negatively affect your credit report.

10. **TERMINATION OR SUSPENSION OF SERVICE.**

1. **Subscribers with Month-to-Month Accounts.** If you are a month-to-month Service customer, either you or Verizon may terminate this Agreement any time by giving notice to the other as set forth in this Agreement. Termination by you will be effective upon your notice to us. Activation or set-up fees paid at the initiation of your Service, if any, are not refundable, except during any applicable 30-day MBG period.
2. **Subscribers with Term Plans; Early Termination Fee.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IF YOUR BROADBAND SERVICE OR ANY COMPONENT OF A BUNDLED SERVICE PLAN IS TERMINATED BY YOU OR BY US AS A RESULT OF VIOLATION BY YOU OF THIS AGREEMENT BEFORE COMPLETING YOUR TERM PLAN, THEN YOU AGREE TO PAY VERIZON THE ETF SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN. If you terminate Service at your location, your existing Term Plan cannot be carried over to a new Service location.
3. **Termination and/or Suspension by Verizon.** Verizon reserves the right to change, limit, terminate, modify or temporarily or permanently cease providing the Service or any part of it with or without prior notice if we elect to change the Service or a part thereof or if you violate the terms of this Agreement. If Verizon terminates your Service under this Section 10.3, you must immediately stop using the Service and you will be responsible for any applicable fees and/or Equipment (or equipment) charges set forth in Sections 9 and 10. If the termination is a result

of violation by you of the terms of this Agreement, you also shall be liable to pay the ETF. If Verizon terminates or ceases to offer service to your location, you shall not be liable to pay the ETF. If your Service is reconnected, a reconnection fee may apply.

4. **Deletion of Data upon Termination.** YOU AGREE THAT IF YOUR SERVICE IS TERMINATED FOR ANY REASON, VERIZON HAS THE RIGHT TO IMMEDIATELY DELETE ALL DATA, FILES AND OTHER INFORMATION (INCLUDING EMAILS, ADDRESS BOOK AND WEB STORAGE CONTENT) STORED IN OR FOR YOUR ACCOUNT WITHOUT FURTHER NOTICE TO YOU.
5. **Return of Equipment upon Termination.** If your HSI Service is terminated for any reason prior to the end of the first year of service and you received Equipment from Verizon, you must return the Equipment to Verizon or you will be charged for the Equipment. Except as set forth below, if your FiOS Internet service is terminated for any reason and you received Equipment, you must return the Equipment to Verizon within 30 days, as instructed by Verizon, or you will be charged for the Equipment. Failure to return any Equipment you received from Verizon, or returning Equipment in a damaged condition (subject only to reasonable wear and tear), will result in the imposition of an Equipment fee that may be substantial. If the Equipment is affixed with a label which includes the following (or similar) message, "PROPERTY OF VERIZON. DO NOT REMOVE FROM PREMISES," then you must not return the Equipment and you will not be charged an Equipment fee as long as the Equipment is left in place in reasonable condition (subject only to reasonable wear and tear).

11. **MANAGEMENT OF YOUR DATA, COMPUTER AND OTHER DEVICES.**

1. **Your Responsibilities Regarding Management of Your Computer, Other Devices and Data.** Except as set forth in the terms and conditions of any applicable warranty provided with the sale of equipment by Verizon and purchased by you from Verizon, you are solely responsible for obtaining, maintaining and updating all equipment and software necessary to use the Service, and for management of your information, including but not limited to back-up and restoration of your data. YOU AGREE THAT VERIZON IS NOT RESPONSIBLE FOR THE LOSS OF YOUR OR ANY THIRD PARTY DATA OR FOR THE BACK-UP OR RESTORATION OF YOUR OR ANY THIRD PARTY DATA REGARDLESS OF WHETHER THIS DATA IS MAINTAINED ON OUR SERVERS OR YOUR, OR YOUR PERMITTED GUESTS' DEVICE(S). YOU SHOULD ALWAYS BACK-UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON VERIZON'S OR ANY THIRD PARTY'S SERVERS.
2. **Content and Data Management by Verizon.** We reserve the right to: (a) use, copy,

display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple Verizon servers for back-up and maintenance purposes; and (b) block or remove any unlawful content you store on or transmit to or from any Verizon server. We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration or improper access.

3. **Your Responsibilities Regarding Security.** You agree that you are solely responsible for maintaining the security of your and any permitted guests' computer(s), device(s) and data, including without limitation, encryption of data and protection of your User ID, password and personal and other data. The Service may permit you with the option to provide third parties authorized by you access to the Internet using your Verizon-issued device. If you believe your login credentials have been lost or stolen, or that someone has gained access to your account or login credentials without your permission, call us immediately at 1-800-837-4966. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE. Use of the Verizon network for the distribution, operation, and maintenance of malicious software (viruses, bots, worms, Trojan horses, etc.) is prohibited. Communications to malicious domain names (e.g., domain names used by networks of machines running malicious software) and to malicious Internet protocol addresses (e.g., IP addresses used by networks of machines running malicious software) may be redirected by Verizon to our network security systems at any time without notice as a countermeasure against the operation of malicious software such as "botnets" in the Verizon network. Verizon's security systems may retain certain information such as the date and time of the malicious communication, the IP address it originated from, the domain name involved, and other technical information for cybersecurity purposes. Our security systems are configured to not retain end user information contained in the payload of the application layer, if any, that is delivered or uploaded by the compromised machines. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE.

4. **Monitoring of Network Performance by Verizon.** Verizon automatically measures and monitors network performance and the performance of your Internet connection and our network. We also will access and record information about your computer and Equipment's profile and settings and the installation of software we provide. You agree to permit us to access your computer and Equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. You also consent to Verizon's monitoring of your Internet connection and network performance, and to our accessing and adjusting your computer and Equipment settings, as they relate to the Service, Software, or other services, which we may offer from time to time. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support

outside of Verizon or its authorized vendors, contractors and agents. Verizon reserves the right to modify the password(s) for the router(s) used with the Service in order to safeguard Internet security, the security and privacy of Subscriber information, where required by law, and/or for other good cause to provide, upgrade and maintain the Service, protect the network, other users of the Internet, or our Subscribers. Should Verizon change such password(s), we will use reasonable means to notify the Subscribers affected, which may include email to a Primary Email Address on file and/or through notice on the Website.

12. LIMITATIONS ON USE OF THE SERVICE.

1. You acknowledge and agree that Verizon (a) is not responsible for invalid destinations, transmission errors, or the corruption of your data; and (b) does not guarantee your ability to access all websites, servers or other facilities or that the Service is secure or will meet your needs.
2. You acknowledge that the Service will allow access to information which may be sexually explicit, obscene or offensive, or otherwise unsuitable for children. You agree that the supervision of use of the Service by children is your responsibility and that Verizon is not responsible for access by you or any other users to objectionable or offensive content. VERIZON STRONGLY RECOMMENDS THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.
3. You understand and agree that if you type a nonexistent or unavailable Uniform Resource Locator ("URL"), or enter a search term into your browser address bar, Verizon may present you with a Verizon Error Assist web search page containing suggested links based upon the query you entered in lieu of your receiving an NXDOMAIN or similar error message. Verizon's provision of the Error Assist page may impact applications that rely on an NXDOMAIN or similar error message and may override similar browser-based search results pages. If you would prefer not to receive Error Assist pages from Verizon, you should follow the opt-out instructions that are available (a) by clicking on the "About" link on any Error Assist page and (b) if the Verizon Toolbar is installed on your computer, by selecting Toolbar Settings (the wrench icon on the right side of the Verizon Toolbar) and selecting the "Disable Error Assist" option.
4. You are not authorized to use any Verizon name or mark as a hypertext link to any Verizon Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Verizon Licensing Company.
5. You agree that Verizon assumes no responsibility for the accuracy, integrity, quality completeness, usefulness or value of any Content, advice or opinions contained in any

emails, message boards, chat rooms or community services, Verizon Web Sites or in any other public services or social networks, and that Verizon does not endorse any advice or opinion contained therein, whether or not Verizon provides such service(s). Verizon does not monitor or control such services, although we reserve the right to do so.

6. You represent that when you, or your permitted guests' transmit, upload, download, post or submit any content, images or data using the Service you or your permitted guests have the legal right to do so and that your or your permitted guests' use of such content, images or data does not violate the copyright or trademark laws or any other third party rights. You understand and agree that any and all use of the Service is subject to the terms of Verizon's Copyright Alert Program, a description of which can be found at <http://verizon.com/terms>.
7. Websites linked to or from the Service are not reviewed, controlled, or examined by Verizon and you acknowledge and agree that Verizon is not responsible for any losses you incur or claims you may have against the owner of third party websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by Verizon.
8. The My Verizon customer portal is provided only for the use of Verizon subscribers and any other use is prohibited. You may view, copy or print pages from the My Verizon solely for personal, noncommercial purposes. You may not otherwise use, modify, copy, print, display, reproduce, distribute, manipulate, or publish any information from My Verizon without the express written permission of Verizon. At any time Verizon may, without notice, make changes to My Verizon or to the online services or products described on My Verizon. Without the express prior written authorization of Verizon, you may not (a) use any data mining robots, hardware or software modules that add a specific feature or service by plugging into an existing larger system, or similar data gathering and extraction tools, scripts, applications, or methods on My Verizon; (b) use any device, software, or hardware to bypass any operational element or to interfere, or attempt to interfere, with the proper working of My Verizon; (c) take any action that imposes an unreasonable or disproportionately large load on My Verizon or its network infrastructure or that adversely affects our network or other customers; (d) decompile, reverse engineer, modify or disassemble any of the software in or associated with the Verizon network and/or servers; (e) use any meta tags or any other "hidden text" utilizing Verizon's name or any Verizon trademark without Verizon's prior written permission; or (f) frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Verizon or use any Verizon trademark except as set forth in our Website Terms of Use located at <https://www22.verizon.com/terms>, as they are updated from time to time.

Unauthorized use of My Verizon or its network infrastructure and/or data display by a person or entity that is not the authorized user of the account is illegal and Verizon reserves the right to take appropriate legal action.

9. If you choose to access the Verizon Web Sites from locations outside the United States, you do so on your own initiative and you are responsible for compliance with all applicable local use controls, laws and regulations, including those relating to the transmission of technical data exported from or imported to the United States or the country in which you reside. Verizon makes no representation that materials on the Verizon Web Sites are appropriate or available for use in locations outside the United States and accessing them from territories where their contents are illegal is prohibited.

13. WARRANTIES AND LIMITATION OF LIABILITY.

1. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT OR OTHER AUTHORIZED EQUIPMENT PROVIDED BY VERIZON (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT OR OTHER AUTHORIZED EQUIPMENT PROVIDED BY VERIZON), VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES) (COLLECTIVELY THE "VERIZON PARTIES"), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. ALSO, THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. NO ADVICE OR INFORMATION GIVEN BY VERIZON OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY WITH RESPECT TO ADVICE PROVIDED.
2. VERIZON DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF VERIZON HAS ACCEPTED YOUR ORDER FOR SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY, LOOP LENGTH, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR VERIZON SHALL HAVE ANY

DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY EQUIPMENT).

3. VERIZON DOES NOT WARRANT THAT ANY OF THE SERVICE, EQUIPMENT, OR OTHER EQUIPMENT AUTHORIZED BY VERIZON FOR USE IN CONNECTION WITH THE SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. VERIZON SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT (INCLUDING ANY OTHER EQUIPMENT AUTHORIZED BY VERIZON FOR USE IN CONNECTION WITH THE SERVICE), RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE.
4. IN NO EVENT SHALL THE VERIZON PARTIES OR VERIZON'S THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (A) ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF VERIZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.
5. THE LIABILITY OF THE VERIZON PARTIES, OR (SUBJECT TO ANY DIFFERENT LIMITATIONS OF LIABILITY IN THIRD PARTY END USER LICENSE OR OTHER AGREEMENTS) OUR THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, FOR ALL CATEGORIES OF DAMAGES SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL NONRECURRING CHARGES, REGULATORY FEES, SURCHARGES, FEES AND TAXES) YOU HAVE PAID TO VERIZON FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN SUCH CLAIM AROSE, WHICH SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY REGARDLESS OF THE TYPE OF CLAIM OR NATURE OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL APPLY TO THE FULL EXTENT PERMITTED BY LAW, AND ARE NOT INTENDED TO ASSERT ANY LIMITATIONS OR DEFENSES WHICH ARE PROHIBITED BY LAW.
6. ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 13 ALSO APPLY TO VERIZON'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.
7. THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS

(SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

14. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless the Verizon Parties from and against all liabilities, costs and expenses, including reasonable attorneys' and experts' fees, related to or arising from your use of the Service or any other equipment used in connection with the Service (or the use of your Service or any such equipment by anyone else): (a) in violation of applicable laws, regulations or this Agreement; (b) to access the Internet or to transmit or post any message, information, software, images or other materials via the Internet; (c) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; or (d) in any manner that results in claims for infringement of any intellectual property rights.

15. NOTICES.

Notice for Arbitration. If either of us intends to seek arbitration under this Agreement, the party seeking arbitration must first notify the other party of the dispute in writing at least 30 days in advance of initiating the arbitration. Notice to Verizon should be sent to NoticeofDispute@verizon.com or to Verizon Dispute Resolution Manager, One Verizon Way, VC54N090, Basking Ridge, NJ 07920. A copy of the Notice of Dispute form can be obtained from NoticeofDispute@verizon.com or from the Verizon Dispute Resolution Manager, and can also be found at www.verizon.com/terms/disputes. The notice must describe the nature of the claim and the relief being sought. Other notices required under this Agreement by you must be provided to us at P.O. Box 11328, St. Petersburg, FL 33733, Attention: Customer Service in the manner set forth in the Contact Us section of the Website. Notice by Verizon to you (including notice of changes to this Agreement under Section 3) shall be deemed given when: (a) transmitted to your Primary Email Address; or (b) mailed via the US mail or hand-delivered to your address on file with us; (c) when posted to the Announcements page of the Website; or (d) when hand-delivered to your Premises, as applicable. Mailed notices may also be included in our billing statements to you.

16. GENERAL PROVISIONS.

1. All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of this Agreement, including without limitation, those relating to Limitation of Liability (Section 13) and Indemnification (Section 14), shall survive such termination.
2. Verizon will not be liable for delays, damages or failures in performance due to causes

beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes, work slow-downs or other labor-related activity, or an inability to obtain necessary equipment or services.

3. You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. We may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.
4. **Except as otherwise required by law, you and Verizon agree that the Federal Arbitration Act and the substantive laws of the state of the customer's billing address, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. UNLESS YOU AND VERIZON AGREE OTHERWISE, YOU AND VERIZON CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN AN ARBITRATION OR SMALL CLAIMS COURT LOCATED IN THE COUNTY OF THE CUSTOMER'S BILLING ADDRESS FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Except as otherwise required by law, including state laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.**
5. Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Verizon or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement. Any export of the Software is strictly prohibited.
6. Verizon's failure at any time to insist upon strict compliance with any of the provisions of this Agreement shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.
7. This Agreement, including all Policies referred to herein and posted on the Website, constitutes the entire agreement between you and Verizon with respect to the subject

matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. No changes by you to this Agreement shall be effective unless agreed to in a writing signed by an authorized person at Verizon.

17. VOLUNTARY MEDIATION.

Verizon offers customers the option of participating in a free internal mediation program. This program is entirely voluntary and does not affect either party's rights in any other aspect of the dispute resolution procedures outlined in Section 18. In our voluntary mediation program, we will assign an employee who is not directly involved in the dispute to help both sides reach an agreement. That person has all the rights and protections of a mediator and the process has all of the protections associated with mediation. For example, nothing said in the mediation can be used later in an arbitration or lawsuit. If you would like to know more, or you would like to start the mediation process, please contact us at NoticeofDispute@verizon.com or through Verizon Dispute Resolution Manager, One Verizon Way, VC54N090, Basking Ridge, NJ 07920, for a notice of customer dispute form. A copy of the [Notice of Dispute form](#) can also be found at www.verizon.com/terms/disputes. Fill out and send the Notice of Dispute Form to us according to the directions on the form.

18. ARBITRATION OR SMALL CLAIMS ACTIONS.

WE HOPE TO MAKE YOU A HAPPY CUSTOMER, BUT IF THERE'S AN ISSUE THAT NEEDS TO BE RESOLVED, THIS SECTION OUTLINES WHAT'S EXPECTED OF BOTH OF US. YOU AND VERIZON BOTH AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND THE PROCEDURES MAY BE DIFFERENT, BUT AN ARBITRATOR CAN AWARD YOU THE SAME DAMAGES AND RELIEF, AND MUST HONOR THE SAME TERMS IN THIS AGREEMENT, AS A COURT WOULD. IF THE LAW ALLOWS FOR AN AWARD OF ATTORNEYS' FEES, AN ARBITRATOR CAN AWARD THEM TOO. WE ALSO BOTH AGREE THAT:

1. THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. EXCEPT FOR SMALL CLAIMS COURT CASES THAT QUALIFY, ANY DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS AGREEMENT OR FROM ANY EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE FROM US (OR FROM ANY ADVERTISING FOR ANY SUCH PRODUCTS OR SERVICES) WILL BE RESOLVED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). YOU CAN ALSO BRING ANY ISSUES YOU MAY HAVE TO THE BETTER BUSINESS BUREAU ("BBB"), ATTENTION OF FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCIES, AND IF THE LAW ALLOWS, THEY CAN SEEK RELIEF AGAINST US FOR YOU.
2. UNLESS YOU AND VERIZON AGREE OTHERWISE, THE ARBITRATION WILL TAKE PLACE IN THE COUNTY OF YOUR BILLING ADDRESS. FOR CLAIMS OVER \$10,000, THE AAA'S

ARBITRATION RULES WILL APPLY; IN SUCH CASES, THE LOSER CAN ASK FOR A PANEL OF THREE NEW ARBITRATORS TO REVIEW THE AWARD. FOR CLAIMS OF \$10,000 OR LESS, THE PARTY BRINGING THE CLAIM CAN CHOOSE THE AAA'S RULES FOR BINDING ARBITRATION OR, ALTERNATIVELY, CAN BRING AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT. YOU CAN GET PROCEDURES, RULES AND FEE INFORMATION FROM THE AAA (WWW.ADR.ORG), OR FROM US. FOR CLAIMS OF \$10,000 OR LESS, YOU CAN CHOOSE WHETHER YOU WOULD LIKE THE ARBITRATION CARRIED OUT BASED ONLY ON DOCUMENTS SUBMITTED TO THE ARBITRATOR, OR BY A HEARING IN-PERSON OR BY PHONE.

3. THIS AGREEMENT DOES NOT ALLOW CLASS OR COLLECTIVE ARBITRATIONS EVEN IF THE AAA PROCEDURES OR RULES WOULD. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE ARBITRATOR SHALL NOT HAVE THE POWER TO DETERMINE THAT CLASS ARBITRATION IS PERMISSIBLE. THE ARBITRATOR ALSO SHALL NOT HAVE THE POWER TO PRESIDE OVER CLASS OR COLLECTIVE ARBITRATION, OR TO AWARD ANY FORM OF CLASSWIDE OR COLLECTIVE REMEDY. INSTEAD, THE ARBITRATOR SHALL HAVE POWER TO AWARD MONEY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM. NO CLASS OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION HELD UNDER THIS AGREEMENT. NO AAA RULE WILL APPLY IF IT CONFLICTS WITH THE PROVISIONS OF THIS AGREEMENT. IN ADDITION, NOTWITHSTANDING ANY CONTRARY PROVISION IN THE AAA OR BBB RULES, THE ARBITRATOR WILL BE BOUND TO APPLY LEGAL PRINCIPLES AND THE LAWS THAT GOVERN THIS AGREEMENT, AND DOES NOT HAVE THE POWER TO AWARD ANY RELIEF THAT IS NOT AUTHORIZED BY SUCH LAWS.

4. IF EITHER OF US INTENDS TO SEEK ARBITRATION UNDER THIS AGREEMENT, THE PARTY SEEKING ARBITRATION MUST FIRST NOTIFY THE OTHER PARTY OF THE DISPUTE IN WRITING AT LEAST 30 DAYS IN ADVANCE OF INITIATING THE ARBITRATION. NOTICE TO VERIZON SHOULD BE SENT TO NOTICEOFDISPUTE@VERIZON.COM OR TO VERIZON DISPUTE RESOLUTION MANAGER, ONE VERIZON WAY, VC54N090, BASKING RIDGE, NJ 07920. THE NOTICE MUST DESCRIBE THE NATURE OF THE CLAIM AND THE RELIEF BEING SOUGHT. IF WE ARE UNABLE TO RESOLVE OUR DISPUTE WITHIN 30 DAYS, EITHER PARTY MAY THEN PROCEED TO FILE A CLAIM FOR ARBITRATION. VERIZON WILL PAY ANY FILING FEE THAT THE AAA CHARGES YOU FOR ARBITRATION OF THE DISPUTE. IF YOU PROVIDE US WITH SIGNED WRITTEN NOTICE THAT YOU CANNOT PAY THE FILING FEE, VERIZON WILL PAY THE FEE DIRECTLY TO THE AAA. IF THAT ARBITRATION PROCEEDS, WE'LL ALSO PAY ANY ADMINISTRATIVE AND ARBITRATOR FEES CHARGED LATER, AS WELL AS FOR ANY APPEAL TO A PANEL OF THREE NEW ARBITRATORS (IF THE ARBITRATION AWARD IS APPEALABLE UNDER THIS AGREEMENT).

5. WE MAY, BUT ARE NOT OBLIGATED TO, MAKE A WRITTEN SETTLEMENT OFFER ANYTIME BEFORE THE ARBITRATION EVIDENTIARY HEARING BEGINS (OR, IF THERE IS NO EVIDENTIARY HEARING, BEFORE THE PARTIES COMPLETE SUBMISSION OF THEIR EVIDENCE TO THE ARBITRATOR). THE AMOUNT OR TERMS OF ANY SETTLEMENT OFFER MAY NOT BE DISCLOSED TO THE ARBITRATOR UNTIL AFTER THE ARBITRATOR ISSUES AN AWARD ON THE CLAIM. IF YOU DO NOT ACCEPT THE OFFER AND THE ARBITRATOR AWARDS YOU AN AMOUNT OF MONEY THAT IS MORE THAN OUR OFFER BUT LESS THAN \$5000, OR IF WE DO NOT MAKE YOU AN OFFER, AND THE ARBITRATOR AWARDS YOU ANY AMOUNT OF MONEY BUT LESS THAN \$5000, THEN WE AGREE TO PAY YOU \$5000 INSTEAD OF THE AMOUNT AWARDED. IN THAT CASE WE ALSO AGREE TO PAY ANY REASONABLE ATTORNEYS' FEES AND EXPENSES, REGARDLESS OF WHETHER THE LAW REQUIRES IT FOR YOUR CASE. IF THE ARBITRATOR AWARDS YOU MORE THAN \$5000, THEN WE WILL PAY YOU THAT AMOUNT.
6. AN ARBITRATION AWARD AND ANY JUDGMENT CONFIRMING IT APPLY ONLY TO THAT SPECIFIC CASE; IT CANNOT BE USED IN ANY OTHER CASE EXCEPT TO ENFORCE THE AWARD ITSELF.
7. IF FOR SOME REASON THE PROHIBITION ON CLASS ARBITRATIONS SET FORTH IN SUBSECTION 19.3 CANNOT BE ENFORCED, THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY.
8. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, YOU AND VERIZON AGREE THAT THERE WILL NOT BE A JURY TRIAL. YOU AND VERIZON UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY WAY. IN THE EVENT OF LITIGATION, THIS PARAGRAPH MAY BE FILED TO SHOW A WRITTEN CONSENT TO A TRIAL BY THE COURT.

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Effective Date April 19, 2015

ATTACHMENT A

ACCEPTABLE USE POLICY

- 1. General Policy:** Verizon reserves the sole discretion to deny or restrict your Service, or immediately to suspend or terminate your Service, if the use of your Service by you or anyone using it, in our sole discretion, violates the Agreement or other Verizon policies, is objectionable or unlawful, interferes with the functioning or use of the Internet or the Verizon network by Verizon or other users, or violates the terms of this Acceptable Use Policy ("AUP").
- 2. Specific Examples of AUP Violations.** The following are examples of conduct which may lead to termination of your Service. Without limiting the general policy in Section 1, it is a violation of the Agreement and this AUP to: (a) access without permission or right the accounts or computer systems of others, to spoof the URL, DNS or IP addresses of Verizon or any other entity, or to penetrate the security measures of Verizon or any other person's computer system, or to attempt any of the foregoing; (b) transmit uninvited communications, data or information, or engage in other similar activities, including without limitation, "spamming", "flaming" or denial of service attacks; (c) intercept, interfere with or redirect email or other transmissions sent by or to others; (d) introduce viruses, worms, harmful code or Trojan horses on the Internet; (e) post off-topic information on message boards, chat rooms or social networking sites; (f) engage in conduct that is defamatory, fraudulent, obscene or deceptive; (g) violate Verizon's or any third party's copyright, trademark, proprietary or other intellectual property rights; (h) engage in any conduct harmful to the Verizon network, the Internet generally or other Internet users; (i) generate excessive amounts of email or other Internet traffic; (j) use the Service to violate any rule, policy or guideline of Verizon; (k) use the service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses, promotes or incites bigotry, hatred or racism; or (l) download or use the Service in Cuba, Iran, North Korea, Sudan and Syria or to destinations that are

otherwise controlled or embargoed under U.S. law, as modified from time to time by the Departments of Treasury and Commerce.

3. **Copyright Infringement/Repeat Infringer Policy.** Verizon respects the intellectual property rights of third parties. Accordingly, you may not store any material or use Verizon's systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including under US copyright law. You understand and agree that any and all use of the Service is subject to the terms of Verizon's Copyright Alert Program, which are incorporated by reference herein. A description of the Copyright Alert Program can be found at <http://myverizon.com/verizononlineterms> or <http://verizon.com/terms>. Under the Copyright Alert Program, Verizon will send you an alert if possible copyright infringement, such as peer-to-peer video or audio file sharing is detected on your Internet connection so that you, as the account owner, can take steps to prevent any future possible infringement. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable laws, it is the policy of Verizon to suspend or terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers of copyrights. In addition, Verizon expressly reserves the right to suspend, terminate or take other interim action regarding the Service of any Subscriber or account holder if Verizon, in its sole judgment, believes that circumstances relating to an infringement of third party intellectual property rights warrant such action. These policies are in addition to and do not affect or modify any other rights Verizon may have under law or contract. If you believe that copyrighted material has been used in violation of this policy or otherwise been made available on the Service in a manner that is not authorized by the copyright owner, its agent or the law, please follow the instructions for contacting Verizon's designated Copyright Agent as set forth in Verizon's Copyright Policy located at <http://www.verizon.com/copy.html>.
4. Verizon may, but is not required to, monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement and AUP. You acknowledge that Verizon shall have the right, but not the obligation, to pre-screen, refuse, move or remove any content available on the Service, including but not limited to content that violates the law or this Agreement.

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ATTACHMENT B

ADDITIONAL SERVICES TERMS

If you subscribe to any of the following services ("Additional Services"), the terms and conditions below apply to your use of the service(s) in addition to the terms of the Agreement.

1. STORAGE SERVICES.

1. **Service Description.** Cloud storage services, including service that may be marketed as Verizon Online Backup and Sharing or Verizon Cloud ("Storage Services") may be made available to you as an optional feature or additional service. Storage Services permit you to store, manage and access content you have created or that you have the legal right to access and copy on multiple platforms or devices ("Content"). The Content you may store, retrieve or back-up may depend on a number of factors including, the type of content and the device you use (e.g. PC, tablet, smartphone). Additional terms and conditions applicable to Storage Services that are included in User Guides and Policies posted on the Website are incorporated by reference and also govern your use.
2. **Content.** You are solely responsible for all Content that you (including your employees, contractors and agents), store or retrieve using any Storage Service. You represent and warrant that you own or have all necessary licenses, rights, consents and permissions (including but not limited to patent, trademark, trade secret, copyright and other proprietary rights i) to store the Content on the Storage Service and to permit access to such Content by others, and ii) to permit us to fully provide the facilities for the Storage Service and exercise the licenses you to grant to us in this Agreement. By using the Storage Services, you grant us a fully paid, royalty-free, irrevocable and fully assignable

and transferable worldwide license to provide facilities for and take all actions with respect to the Content as may be necessary or reasonable to facilitate or provide Storage Services. The license rights granted by you to us shall include all rights under applicable current and future patents, copyrights and trademarks owned, licensed or licensable by you to the extent required or reasonable for Verizon to provide Storage Services to you including, without limitation, i) storing and retrieving Content; ii) conforming to connecting networks' technical requirements and iii) transcoding Content into a viewable or accessible format. We are not obligated to screen or monitor your Content but we reserve the right to do so and to remove any content as we deem warranted in our sole discretion, with or without notice to you. If you use the Storage Service via a WiFi network, including use to transfer data between your mobile or other devices, you are solely responsible for ensuring the security of the WiFi network. We are not responsible for any loss of Content.

3. Compliance with Legal Standards. YOU ACKNOWLEDGE AND AGREE THAT THE STORAGE SERVICE IS IMPLEMENTED WITHOUT SPECIFIC CONTROLS THAT MAY GENERALLY BE REQUIRED OR CUSTOMARY FOR CUSTOMERS IN ANY PARTICULAR INDUSTRY AND ARE NOT DESIGNED TO SATISFY ANY SPECIFIC LEGAL OBLIGATIONS. YOU ARE SOLELY RESPONSIBLE FOR DETERMINING THAT THE STORAGE SERVICE SATISFIES ANY LEGAL, REGULATORY OR CONTRACTUAL OBLIGATIONS YOU MAY HAVE. YOU AGREE TO USE THE STORAGE SERVICES IN ACCORDANCE WITH ALL APPLICABLE LAWS AND NOT TO USE THE STORAGE SERVICES IN ANY MANNER THAT MAY IMPOSE LEGAL, REGULATORY OR CONTRACTUAL OBLIGATIONS ON VERIZON OTHER THAN THOSE WITH WHICH WE HAVE EXPRESSLY AGREED TO COMPLY IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU UNDERSTAND THAT YOU ARE NOT PERMITTED TO USE THE STORAGE SERVICES TO STORE OR TRANSMIT PROTECTED HEALTH INFORMATION AS DEFINED IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA") AND IMPLEMENTING REGULATIONS (45 C.F.R. 160.103) AND YOU AGREE NOT TO CAUSE, OR OTHERWISE REQUEST THAT VERIZON CREATE, RECEIVE, MAINTAIN OR TRANSMIT PROTECTED HEALTH INFORMATION (FOR YOU OR ON YOUR BEHALF IN CONNECTION WITH THE SERVICES OR IN ANY MANNER THAT WOULD MAKE VERIZON A BUSINESS ASSOCIATE (AS DEFINED AT 45 C.F.R. § 160.103) TO YOU.
4. Open Source Software. The Software provided with Storage Services may contain programming, scripts, tools, modules, libraries, components, or other items that were developed using "open source" code (the "Open Source Software"). Open Source Software is provided to you under one or more open source license agreements that contain important information concerning ownership, terms of use, and rights, and restrictions for the applicable element of the Open Source Software. Copies of the Open Source License are available at www.verizonwireless.com/cloud/licensing. By obtaining, accessing, downloading and/or using Software or the Open Source Software, you agree that you have read, and understood, and will comply with, the terms and conditions of the

applicable Open Source Licenses in addition to all other the terms applicable to Software under this Agreement.

5. **Termination.** Notwithstanding any other provisions of this Agreement, in the event of a breach by you of any terms of this Agreement, Verizon reserves the right immediately to terminate your Storage Service account without notice. You agree that if your Storage Service is terminated for any reason, Verizon has the right to immediately delete all data, files, and other content or information stored on your account without further notice to you. It is your responsibility to remove or copy any content in your storage account prior to termination or cancellation; otherwise, it may be lost. Verizon will also delete archived data.
6. **Use Requirements for Free Storage Accounts ("Free Account").** If you sign up for a Free Account, you must actively use it. To "actively use" your account means to upload, download, backup or restore content to it. In the event you do not use your Free Account for a period of sixty (60) days or more, Verizon may cancel your Free Account. We will provide notice of cancellation by email to your primary verizon.net email address. Use of your Free Account within fourteen (14) calendar days of the date of your cancellation notice will reactivate your account. It is your responsibility to remove or copy any content in your Free Account prior to cancellation or termination; otherwise, it will be lost. Verizon may, at its election, also delete archived data.

Inactivity Disconnect Policy. If your Storage Service is idle for fifteen minutes, it will be subject to automatic log-off. Your service may be deemed idle if there appears to be no interactive, human-generated data received from the remote user's computer system within fifteen (15) minute period. An automated check of email or pinging of the host or other server data will not be considered interactive or human generated. You will not be subject to automatic log-off if while you are accessing your account from a wireless device.

7. **Verizon Online Backup & Sharing** is provided by DigiData Corporation, and **Verizon Cloud** is provided by Synchronoss Technologies, Inc. which are third party beneficiaries of this Agreement capable of enforcing its terms independently from Verizon.

2. **EMAIL AND EMAIL MESSAGING SERVICE.**

1. **Email Service.** Use of Verizon email service is subject to Verizon's email and anti-spam policies, which include important information about limitations on use of the email service such as the storage capacity and deletion of stored messages. More information is available on the Website and these email policies are incorporated herein by reference.
2. **Email Security.** Verizon reserves the right in our sole discretion to provide the level of security we deem appropriate to safeguard our network and customers, and other Internet users, against Internet threats or abuses, including viruses, spam and phishing

threats. These security measures may include, but are not limited to, the use of firewalls and blocklists to block potentially harmful or abusive emails or attachments, anti-spam filters, anti-virus and anti-spyware software, and blocking selected ports. **Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your email account. By using any Verizon-provided email service, you agree that delivery and receipt of email is not guaranteed and to Verizon's use of such Internet and email security measures we in our sole discretion deem appropriate.**

3. **Email Aliases.** Verizon will issue email aliases (alternate email addresses) based upon availability. You will surrender your alias by changing it or if your account is terminated for any reason and we will not forward emails addressed to that alias. If your Service is reinstated we cannot guarantee your alias will still be available to you.

3. VERIZON INTERNET SECURITY SUITE ("VISS").

1.VISS Powered by McAfee.

1. VISS Powered by McAfee and VISS Multi-Device Powered by McAfee are manufactured by McAfee, Inc. located at 2821 Mission College Boulevard , Santa Clara, CA 95054, which is a third party beneficiary of this Agreement capable of enforcing its terms independently from Verizon. By accepting, accessing or using either of these Additional Services, in addition to the terms set forth in this Agreement, You agree to be bound by the applicable terms of the McAfee Consumer Products End User License Agreement, located at <http://home.mcafee.com/Root/AboutUs.aspx?id=eula> for this Additional Service, which are incorporated by reference as if set forth in its entirety herein. Please review these terms carefully as they contain important limitations and conditions with respect to this Additional Service. The personal jurisdiction and venue provisions in Section 16.4 shall not apply to any causes of action by or against McAfee Inc. under or in relation to this Agreement. You acknowledge and agree that claims against McAfee regarding the VISS Powered by McAfee and VISS Multi-Device Powered by McAfee shall be governed by and construed in accordance with the substantive laws of the State of New York.
2. Use of each license for VISS Powered by McAfee is limited to one computer. Updates to previous versions of VISS Powered by McAfee require a valid license to the previous version. After receiving an update, you may continue to use the previous version of VISS Powered by McAfee on the same computer to assist in transitioning to the update. Previous versions or copies thereof may not be transferred to another computer unless all copies of updates are also transferred. Prior versions of VISS Powered by McAfee will not be supported after an updated version has been installed. If You upgrade to VISS Multi-Device Powered by McAfee, you will no longer be able to use VISS Powered by McAfee.

3. VISS Powered by McAfee and VISS Multi-Device Powered by McAfee may include software programs licensed (or sublicensed) to the user under the GNU General Public License ("GPL") or other similar free software licenses which, among other rights, permit the user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed in an executable binary format, that the source code also be made available. With VISS Powered by McAfee and VISS Multi-Device Powered by McAfee, the source code is made available as part of the download package. If any Open Source Software licenses require that McAfee provide rights to use, copy or modify a program that are broader than the rights granted herein, such rights shall take precedence.
4. You acknowledge that VISS Powered by McAfee and VISS Multi-Device Powered by McAfee employ certain applications and tools to retrieve non-personally identifiable information about your computer system to provide and support VISS Powered by McAfee and VISS Multi-Device Powered by McAfee. Because this information is essential to providing quality service and up to the minute threat protection, there is no opt-out available for this information collection.

4. **VERIZON GAMES ON DEMAND.** Verizon Games on Demand are manufactured by Exent Technologies, Inc., which is a third party beneficiary of this Agreement capable of enforcing its terms independently from Verizon. Verizon Games on Demand are not available for purchase at this time.

5. **VERIZON PREMIUM TECHNICAL SUPPORT SERVICE ("PTS").**

1. **Service Description and Scope of Support.** PTS is a service intended to address issues outside the scope of Verizon's standard technical support. PTS includes: (a) configuration troubleshooting; (b) evaluation of and attempts to correct software, operating systems and networking issues; (c) virus/spyware support; and (d) software and peripherals support for network, video and sound cards, memory, hard drives, CD/DVD reader/writers, printers, scanners and networking equipment. All PTS services are offered in English only.
2. **Limitations of PTS.**
 1. PTS does not support all software, hardware or Internet-related products, applications or features and we reserve the right to defer support issues to your equipment or software vendor. PTS does not include training on hardware or software use.
 2. PTS is not intended to replace the more advanced technical support that may be available from hardware or software manufacturers.

3. PTS is for incident-specific troubleshooting and problem resolution, and excludes:
(a) computer programming; (b) software development; (c) warranty repairs or product replacement; (d) support for Windows® 95 and earlier versions of Windows; (e) support for Mac operating systems earlier than OS X; (f) problems or issues arising out of any impermissible or unauthorized use or modification of a product or (g) upgrades of firmware, software, operating systems, or applications. Use of PTS does not constitute a license to use the software, applications or equipment being supported, or an upgrade thereto. You are responsible for obtaining any necessary licenses to use your software and applications.
4. In some cases, we may not be able to diagnose or resolve a problem because of complications with your computer or its configuration. PTS is offered as a "best efforts" service and without warranty except as specifically set forth in this Agreement. We reserve the right to refuse to troubleshoot software not on our list of supported products.
5. You understand and agree that technical problems may be the result of software or hardware errors not yet resolved by the product manufacturer, and that we may not have the ability to obtain the information necessary to resolve a specific technical problem.
6. If you purchase the Thirty (30) Minute Premium Technical Support Service ("30 Minute PTS"), the Service is non-refundable. 30 Minute PTS has a maximum duration of thirty (30) minutes and must be used within twenty-four (24) hours from the time of purchase; and you must be a subscriber to Verizon High Speed Internet or Verizon FiOS Internet service.

3. Your Responsibilities.

1. In order for us to provide PTS, you must first confirm that you have:(a) full access (including any required licenses) to the hardware and/or software that is the basis of the problem; and (b) completed a back-up of any data, software, information or other files stored on your computer disks and/or drives that may be impacted. **Verizon is not responsible for the loss, corruption or alteration of data, software or files that may result from performance of PTS by our technicians.** You also acknowledge and agree that you are the owner or authorized user of any hardware or software about which you are contacting us. PTS is only available to you and those residing at your location; PTS is not transferrable.
2. You agree to cooperate with and follow instructions provided by Verizon and acknowledge that such cooperation by you is essential to our delivery of PTS to you.
3. You hereby grant Verizon permission to view, access and modify your computer,

computer (including registry) settings and any related software or peripheral equipment, including all data, hardware and software components, in order to perform PTS.

4. You are responsible for any and all restoration and reconstruction of lost or altered files, data, or programs, and for ensuring that any information or data disclosed to Verizon is not confidential or proprietary to you or any third party.

4. Support Procedures.

1. Purchase Terms. PTS can be purchased either: (a) for an unlimited number of Incidents for a term beginning on the date you order PTS and continuing for the duration of the plan you selected ("Term Plan"); or (b) on a per-Incident basis (the "Per-Incident Service Plan"). For the Per-Incident Service Plan, Verizon will address a single Incident (as defined in Section 5.4.2 below) which shall include follow-up calls, as reasonable and necessary, regarding the Incident. Once an Incident is resolved (as set forth in Section 5.4.3, below), you may call back and obtain assistance on the same Incident for up to seventy-two (72) hours at no additional charge, after which the Incident will be considered closed. Once an Incident has been closed by Verizon, any further calls or requests for assistance will be considered a new Incident and additional fees will apply if you subscribe to our Per-Incident Service Plan. IF YOU PURCHASE PTS UNDER A TERM PLAN AND YOUR SERVICE IS TERMINATED BY YOU (OR BY US IF YOU BREACH THIS AGREEMENT) BEFORE COMPLETING YOUR TERM, THEN, UPON TERMINATION OF YOUR SERVICE, YOU AGREE TO PAY VERIZON AN EARLY TERMINATION FEE IN THE AMOUNT SET FORTH IN THE PLAN YOU HAVE CHOSEN.
2. "Incident" means a specific, discrete problem for which Verizon will attempt to isolate its origin to a single cause. Verizon, in its sole discretion, will determine what constitutes an Incident.
3. An Incident will be considered resolved when you receive one of the following: (a) information or advice that resolves the Incident; (b) information on how to obtain a software solution that will resolve the Incident; (c) notice that the Incident is caused by a known, unresolved issue or an incompatibility issue; (d) information that the Incident can be resolved by upgrading to a newer release of a product; (e) notice that the Incident has been identified as a hardware equipment issue; or if (f) you cannot, or elect not to, pursue the course of action we recommend.
4. Our advice to you may include steps that you will need to take before the Incident can be resolved, such as buying cables or cords, acquiring software, etc. and we will keep your service request open for future reference when you are ready to resume the process.

5. **Third Party Warranties.** Third-party equipment, software and peripheral products are covered by the warranties provided by the original manufacturer or the seller of the product. Third party warranties may vary from product to product. It is your responsibility to consult the applicable product documentation for specific warranty information. **In addition, you acknowledge that certain third party equipment or software warranties may limit or void the remedies that they offer if unauthorized persons perform support service on the equipment or software. It is your responsibility to ensure that any impact that Verizon's delivery of PTS might have on third party warranties is acceptable to you.**
6. **Customer Specific Service.** PTS is only available to you and to persons you authorize. In either case, the terms of this Agreement will apply to the PTS services we perform.
7. **LIMITATION OF LIABILITY. VERIZON'S TOTAL LIABILITY ARISING OUT OF THE PTS SERVICE, OR FROM VERIZON'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS, IF ANY, SHALL BE LIMITED, AT VERIZON'S SOLE DISCRETION AND OPTION, (A) TO REPERFORMING THE PTS SERVICE, OR (B) AS SET FORTH IN SECTION 13 OF THE AGREEMENT; EXCEPT THAT, IN THE CASE OF PER-INCIDENT SERVICE PLANS, YOUR REMEDIES WILL BE LIMITED TO A REFUND OF THE CHARGES AND FEES PAID FOR THE PTS SERVICE GIVING RISE TO THE CLAIM, IF ANY. THE REMEDIES FOR A FAILURE OR BREACH OF SUCH LIMITED WARRANTY ARE EXCLUSIVE.**

6.

V 15-1 – Internet TOS

Effective Date April 19, 2015

CLARK COUNTY PROSECUTING ATTORNEY

August 14, 2019 - 11:24 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52544-5
Appellate Court Case Title: State of Washington, Respondent v. Aaron Mark Harrier, Appellant
Superior Court Case Number: 16-1-01186-1

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