

## END USER LICENSE (EULA)

### ULTRADNS MANAGED EXTERNAL SERVICE

#### Section 1

1. **PROVISION OF SERVICES.** Vercara, LLC (“Provider”) hereby grants you (“End User”) a limited, non-exclusive, non-transferable right to access and use the UltraDNS Managed External Services (“Services”). Except as set forth herein, Provider grants no other rights or licenses to End User with respect to the Services.

2. **USE OF SERVICES.** The Services are to be used solely for End User’s internal business purposes only and are not for resale to any third party or use on a service bureau basis. In order to provide the Services, End User may be required to connect to Provider’s systems or network (“Provider Network”). End User shall only use the Provider Network for the lawful business purposes outlined in the applicable Service Order. End User shall not use or allow use of the Provider Network in a manner that interferes with the use of the Provider Network by Provider or by any other authorized, third party user. Unless otherwise provided for in a service order, End User shall have sole responsibility for the expenses associated with deployment of any hardware or software necessary to access the Provider Network.

3. **UPGRADES.** Provider may make upgrades or changes the Services which will not materially diminish the functionality of the Services without prior notice to End User. In the event that a change to the Services would, in Provider’s reasonable discretion, permanently, materially diminish or impair the functionality of the Services (“Change”),

Provider shall provide End User with written notice at least sixty (60) days prior to the date the Change is to take effect. If the Change is unacceptable to End User, End User may terminate the relevant Service Order without penalty by providing written notice to Provider at least thirty (30) days prior to the date the Change is scheduled to take effect. Any use of the Services by End User after the effective date of the Change will be deemed acceptance of the Change by End User. Provider may discontinue a Service at any time upon ninety (90) days prior written notice, provided that such right shall not be utilized by Provider as a termination for convenience, but shall only be used where such discontinuance would apply to all or substantially all of Provider’s customers.

4. **INDEMNITY.** Provider will defend at its own expense any action brought against End User, or End User’s directors, officers, or employees by a third party to the extent that the action is based on a claim, suit, or proceeding that the Services infringe such party’s copyright or trademark rights (“Infringement Claim”). In the event of any such Infringement Claim or a claim that the Services violate that party’s intellectual property rights, Provider may, at its option:

- (a) purchase a license to permit End User to continue using the Services;
- (b) modify or replace the relevant Services with non-infringing services of substantially equivalent performance within a reasonable period of time; or
- (c) terminate the applicable service order immediately and reimburse End User for any fees paid in advance for Services that will not be performed due to such termination.

Notwithstanding the foregoing, Provider will have no obligation under this Section or otherwise with respect to any Infringement Claim based upon (i) any use of the Services not in accordance with a service order, or (ii) any modification of the Services by any person other than Provider or its authorized agents or subcontractors. This Section states Provider's sole and exclusive liability, and End User's sole and exclusive remedy, for an Infringement Claim.

**5. LIMITATION OF LIABILITY.** IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY LOST PROFITS, LOST DATA, OR LOST EQUIPMENT, ANY WEBSITE OR NETWORK DOWNTIME, COST OF PROCURING SUBSTITUTE SERVICES OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER ARISING, WHICH ARE RELATED TO THE PROVISION OF SERVICES HEREUNDER, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR BREACH OF ANY TERM FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH SHALL BE THE EXCLUSIVE REMEDY AND PROVIDER'S SOLE LIABILITY. IN NO EVENT SHALL PROVIDER'S TOTAL CUMULATIVE LIABILITY TO END USER FOR ANY DIRECT DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY END USER TO PROVIDER IN CONNECTION WITH THE CONTESTED SERVICE OVER THE PRECEDING TWELVE (12) MONTHS FROM THE TIME THE EVENT RESULTING IN LIABILITY OCCURS .

**6. DISCLAIMER.** PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR SECURE AND DOES NOT WARRANT THE SERVICES AGAINST MALFUNCTION OR CESSATION DUE TO CESSATION OR MALFUNCTION OF ANY INTERNET SERVICE PROVIDER OR ANY OF THE THIRD PARTY NETWORKS THAT FORM THE INTERNET. EXCEPT AS SET FORTH HEREIN, ALL SERVICES AND EQUIPMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND PROVIDER MAKES NO WARRANTIES TO END USER OR TO ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, END USERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BY WAY OF EXAMPLE, WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR RESULTS TO BE OBTAINED FROM USE OF THE SERVICES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

**7. GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without regard to its conflict of law principles and both parties consent to the exclusive jurisdiction of the courts of Fairfax County, Virginia.

**8. INTELLECTUAL PROPERTY.** Provider and End User retains all right, title and interest in and to its intellectual property. No licenses will be deemed to have been granted by either Provider or End User to any of its intellectual property except as expressly authorized in a service order. End User acknowledges that it has no proprietary interest in the Services, including, but not limited to, the servers, software, or data used by Provider in the provision of the Services. Unless otherwise set forth in a Service Order, all right, title and ownership to any software (both in object code and source code format), hardware or know-how which Provider licenses or develops to provide the Services (collectively, "Provider Intellectual Property") is owned exclusively by Provider or its licensors. End User agrees not to, modify, copy, or reverse engineer the Services.

**9. SLA.** If the Services are delivered subject to a service level agreement ("SLA"), End User's sole and exclusive remedy, and Provider's sole and exclusive obligation, for a breach of the foregoing representation will be the remedy(ies) set forth in the SLA. A breach of this representation or the SLA shall not constitute a breach of this Service Order. Provider does not warrant the accuracy of the geographic location of any IP address with respect to the Directional DNS Service (as defined in the Order Form).

**10. ACCEPTABLE USE POLICY.** End Users shall not use, or allow use of, the Services in any of the following manners ("Abuses"): (a) Use of the Services in an unlawful manner or for an unlawful purpose, including display of unlawful content; (b) Use of the Services to transmit or distribute material that intentionally contains a virus, "Trojan Horse," adware, spyware or data that is designed to corrupt or disable any computer file, database or network; (c) Use of the Services in a manner that, in Provider's discretion, directly or indirectly produces or threatens to produce a negative effect on the Provider Network or that interferes with the use of the Services or Provider network by other customers or authorized users, including, without limitation, overloading servers or causing portions of the Provider Network to be blocked; (d) Use of the Services to post substantively similar articles to an excessive number of newsgroups or to send unsolicited and/or mass e-mailings, whether or not such activities provoke complaints from the recipients; (e) Altering any aspect of the Service where such is not authorized by Provider; or (f) Use of the Services in a manner that causes or is designed to cause, a denial-of-service or similar attack to any other party whether on the Provider Network or on another network. Provider may suspend a domain, a record, or the Services, as applicable, if, in Provider's reasonable determination, an Abuse occurs. Such suspension shall remain in effect until End User corrects the applicable Abuse. In the event that, in

Provider's reasonable determination, an Abuse is critically impacting, or threatens to impact critically, the Provider Network or servers, Provider may suspend a domain, a record or the Service, as applicable, immediately and without prior notice. In the event that an Abuse is not critically impacting the Provider servers or network or threatening to do so, Provider shall give End User prior notice of any suspension. End User's failure to correct any Abuse within thirty (30) days after notice from Provider will entitle Provider to terminate an applicable service order for breach without any liability or obligation to provide a refund to End User for any Service suspended or terminated.

**11. WARRANTY.** End User warrants that (a) it has all right, title and interest to use and/or access all of the applications or content End User provides to Provider to perform the Services and all of the content accessed by Provider at End User's direction to perform the Services (collectively, "Content"); and (b) it shall provide complete, accurate, and current information as is necessary for Provider to perform the Services and shall update this information as needed to keep all such information complete, accurate, and current.

**12. INDEMNIFICATION.** End User will defend at its own expense any action brought against Provider, its directors, officers, or employees by a third party to the extent that the action is based on a claim, suit, or proceeding ("Claim"): (a) that arises out of or relates to the Content including, without limitation, a claim Provider has infringed upon any third party's intellectual property rights in the Content; (b) that arises out of or relates to End User's or its end users use of the Services other than a claim that the Service itself as an application infringes the intellectual property rights of a third party; (c) brought by End Users; or (d) that arises out of breach of Section 10.

## **Section 2**

(b) ACCEPTABLE USE POLICY. End Users shall not use, or allow use of, the UDNS in any of the following manners ("Abuses"):

(i) Use of the UDNS in an unlawful manner or for an unlawful purpose, including display of unlawful content;

(ii) Use of the Services to transmit or distribute material that intentionally contains a virus, "Trojan Horse," adware, spyware or data that is designed to corrupt or disable any computer file, database or network;

(iii) Use of the UDNS in a manner that, in Provider's discretion, directly or indirectly produces or threatens to produce a negative effect on the Provider Network or that interferes with the use of the UDNS or Provider network by other customers or authorized users, including, without limitation, overloading servers or causing portions of the Provider Network to be blocked;

(iv) Use of the UDNS to post substantively similar articles to an excessive number of newsgroups or to send unsolicited and/or mass e-mailings, whether or not such activities provoke complaints from the recipients;

(v) Altering any aspect of the UDNS where such is not authorized by Provider; or

(vi) Use of the UDNS in a manner that causes or is designed to cause, a denial-of-service or similar attack to any other party whether on the Provider Network or on another network. Provider may suspend a domain, a record, or the UDNS, as applicable, if, in Provider's reasonable determination, an Abuse occurs. Such suspension shall remain in effect until End User corrects the applicable Abuse. In the event that, in Provider's reasonable determination, an Abuse is critically impacting, or threatens to impact critically, the Provider Network or servers, Provider may suspend a domain, a record or the UDNS, as applicable, immediately and without prior notice. In the event that an Abuse is not critically impacting the Provider servers or network or threatening to do so, Provider shall give End User prior notice of any suspension. End User's failure to correct any Abuse within thirty (30) days after notice from Provider will entitle Provider to terminate this Service Order for breach without any liability or obligation to provide a refund to End User for any Service suspended or terminated.

(c) WARRANTY. End User warrants that (a) it has all right, title and interest to use and/or access all of the applications or content End User provides to Provider to perform the Ultra DNS service and all of the content accessed by Provider at End User's direction to perform the services (collectively, "Content"); and (b) it shall provide complete, accurate, and current information as is necessary for Provider to perform its services and shall update this information as needed to keep all such information complete, accurate, and current.

(d) INDEMNIFICATION. End User will defend at its own expense any action brought against Provider, its directors, officers, or employees by a third party to the extent that the action is based on a claim, suit, or proceeding ("Claim"):

(i) that arises out of or relates to the Content including, without limitation, a claim Provider has infringed upon any third party's intellectual property rights in the Content;

(ii) that arises out of or relates to End User's or its end users use of the services other than a claim that the service itself as an application infringes the intellectual property rights of a third party;

(iii) brought by End Users; or (d) that arises out of breach of the Acceptable Use Policy.