

Please read the following terms-of-service agreement. By subscribing to our services, you agree to be bound by all the terms of this agreement. If you agree with the terms of this agreement, click “I Accept” (or similar syntax) or check the appropriate box manifesting your intent to be bound by this agreement and continue with the account set-up process. If you do not agree with all the terms of this agreement, you must not proceed any further. We will provide services to you only if you agree to be bound by all the terms contained in this agreement. Your electronic acceptance of this agreement is permitted by the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) and similar federal and state laws. Any use of our services will constitute an act of acceptance of the current version of this terms-of-service agreement.

## Terms-of-Service Agreement

Last Updated: May 23, 2019

### 1. Introduction

This terms-of-service agreement is entered into between you, or the entity on whose behalf you are signing this agreement, and Vacares, LLC, a Texas limited liability company. The following terms and conditions, together with our Acceptable Use Policy (“AUP”), Copyright Policy, Privacy Policy, and our Service Level Agreement, each of which is incorporated into this agreement by reference (collectively, the “Policies”), governs your use of our Services. By corresponding with us, browsing our website, using our Services, or by clicking to accept or agree to this agreement when this option is made available to you, you accept and agree to be bound and abide by this agreement and the Policies. We may modify this agreement from time-to-time and by continuing to use our Services, you agree to be bound by the modifications.

### 2. Customers

While we facilitate your business on the Internet, we are an independent contractor. We only have control of the products and services we provide directly and are not liable for your actions, the actions of third-party service providers, or the actions of individuals who use your products and services (“End Users”).

### 3. Services

Vacares provides a number of services and products to its customers, which are collectively referred to in this agreement as the “Services.” Regardless of whether you pay for a Service or it is provided as part of a package or for free, any Service you request or allow us to provide to you is included as part of the “Services” we refer to in this agreement and the Policies. All Services are subject to each of our Policies. Services may also be provided by third parties and their terms of service or use that may contain additional or different terms will also apply to your use of their services. We may change the specifications or details of the Services at any time. In addition, the third parties we contract with to provide the Services may change their offering between the time of purchase and the date the Services are delivered. We will use reasonable efforts to inform you of changes to the Services.

3.1 **Knowledgebase.** Additional information on our Services, including those listed below, can be found in our Knowledgebase, located at: <https://support.vacares.com/s/>. This agreement governs if it is in conflict with anything posted in the Knowledgebase.

3.2 **Services Offered.** Vacares offers a number of different products and services, including those listed below. This agreement and our Policies apply to all Services, whether or not listed below. Details are available on the webpages indicated and the details on those webpages do not modify or supplement this agreement or our Policies.

(a) Fortress Bare-Metal Servers: <https://vacares.com/products/fortress>;

(b) Nest Virtual Private Servers: <https://vacares.com/products/nest>; and

(c) Grid Content Delivery Network: <https://vacares.com/products/grid>.

3.3 **Terms Applicable to All Services.** All subscriptions to Services are subject to formal acceptance by us. Your subscription to the Services will be deemed accepted by us when we deliver a service order confirmation to you. We reserve the right to refuse to provide you with any Service for any reason. Notwithstanding the Uptime Guarantee set out in our Service Level Agreement, we also reserve the right to interrupt access to the Services to perform regular and emergency maintenance as needed. You may order additional Services at any time, on condition that you agree to pay the then-current fees for those additional Services. All additional Services will be considered “Services” under this agreement. All Services provided are subject to availability and to all the terms of this agreement.

3.4 **Terms Applicable to Hosting Services**

(a) Our hosting accounts are allocated bandwidth depending on the package you select. The bandwidth for Services purchased does not rollover and is not creditable across periods. If you require more bandwidth than you have purchased, your account may be suspended until the next period, you may purchase additional bandwidth by upgrading your account, your account may be terminated for a violation of the terms of the package you purchased, or we may charge you an additional fee for the overage, in our sole discretion.

(b) We will provide, as part of the Service cost, the number of primary IP addresses included in the plan you select. You may request additional IP addresses for an additional fee. If we need to change one of your assigned IP addresses, we will notify you of the change by email. You may use the IP addresses provided only in association with the Services and they must not be transferred.

(c) In using our hosting Services, you must not place excessive burdens on our CPUs, servers, or other resources, including our customer support services. You understand that bandwidth, connection speeds, and other similar indices of capacity are maximum numbers. Consistently reaching these capacity numbers may result in our need to place restrictions on your use of the Services, including suspension or termination of your account or a reduction in bandwidth available for your use (also known as bandwidth throttling), in our sole discretion.

#### 4. **Access**

You will not have physical access to any of the servers on which your data is stored. These servers

will often be shared with third parties. Use by any third party may affect your use and administration of the server. You will not take any actions to limit the use of or alter the server or Service functionality or the functionality of any related equipment.

## 5. **Registration; Account Information**

5.1 **Registration.** You state that before you use any of the Services or sign up for an account that you are at least 18-years old and have the authority to bind yourself or the entity you represent to this agreement. You may be subject to a credit check and screening for potential fraud and accurate information must be supplied for purposes of this screening. Further, before using the Services, you state to Vacares that: (a) you have the experience and knowledge necessary to use the Services; (b) you understand and appreciate the risks inherent to you, your business, and your person, which come from using the Services in particular and doing business on the Internet in general; and (c) you will provide us with material that may be implemented by us to provide the Services.

5.2 **Account Information.** You are required to provide us with accurate information when setting up your account. You must also keep this information, including your email address, up to date during our relationship. Occasionally, we may need to communicate with you by email about the Services. We have no responsibility or liability for interruptions in the Services, or damages of any sort, based on email communications that are misdirected or blocked by a third-party application as a result of your failure to maintain updated account and contact information or for circumstances beyond our control.

### 5.3 **Account Security**

(a) You are responsible for all actions that are performed with, by, or under your account credentials whether done by you or by others. All account access, password, and other security measures are your responsibility. Vacares is not liable for any damages, direct or indirect, that result from unauthorized account access or use.

(b) In connection with support services, you will be responsible for all authorized actions taken by our support personnel using your login. Before you request support, you should backup your data.

(c) You will give Vacares permission to access your account to troubleshoot technical issues with the account or server and to confirm compliance with all our Policies. We also conduct automated scans of data for security purposes and reserve the right to change permissions, modify files, or quarantine files that are deemed to be malicious in nature.

## 6. **Fees and Payment**

6.1 **Fees.** You are responsible for all charges, costs, expenses, and other fees (the "Fees") associated with your use of the Services once the Services are made available to you.

6.2 **Taxes.** All Fees and other amounts payable by you under this agreement are exclusive of

taxes and similar assessments. You are responsible for all value-added, sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, local, or foreign government or regulatory authority on any amounts payable by you under this agreement, other than any taxes imposed on Vacares' income. Unless you provide us with evidence of an exemption, we will invoice you for those taxes if we believe we have a legal obligation to do so and you must pay those taxes if so invoiced.

- 6.3 **Payment.** Payment for Services is due in advance of the period for which that payment covers. **Services are billed on an automatic and recurring basis until cancelled by you.** You will pay all other Fees and Reimbursable Expenses on or before the date stated in the invoice. Failure to pay Fees for Services when due may result in the suspension or termination of Services.
- 6.4 **Payment Methods.** You will make all payments under this agreement in US dollars. We accept payment via Visa, MasterCard, Discover, American Express, and PayPal. **By providing us with your account payment information, you give us consent to charge you on the due date of any invoices linked to the account.**
- 6.5 **Late Payment.** If you fail to make any payment when due them, in addition to all other remedies that may be available:
- (a) we may charge a 10% fee after seven days of nonpayment;
  - (b) you will reimburse us for all costs incurred in collecting any late payments or late fees, including attorneys' fees, court costs, and collection agency fees; and
  - (c) we may suspend performance of the Services until all past due amounts and late fees on it have been paid, without incurring any obligation or liability to you or any other person by reason of that suspension.
- 6.6 **No Deductions or Setoffs.** All amounts payable to Vacares under this agreement will be paid by you to Vacares in full without any setoffs, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than services credits issued under the Service Level Agreement or any deduction or withholding of tax as may be required by applicable law).
- 6.7 **Fee Increases.** To remain competitive, we occasionally make changes to our plans and pricing. We may increase Fees no more than once annually for any contract year by providing written notice to you at least 30 calendar days before the start of that contract year.
- 6.8 **Reimbursable Expenses.** You will reimburse us for out-of-pocket expenses incurred by us in connection with performing the Services.
- 6.9 **Billing Date Changes.** You may request Vacares to change your billing due date. If you request a change in the billing due date, Vacares will provide you with a prorated invoice that covers any gaps in the billing dates. For example, if you are being charged on the first of the month but want to start being charged on the 16th of the month, Vacares can

change you to the 16th of the month but will issue a prorated invoice covering the 1st through the 15th.

- 6.10 **Payment Extension.** If you need a payment extension, you must request it 48 hours before the payment due date to avoid being assessed late fees. Vacares grants payment extensions in its sole discretion.
- 6.11 **Billing Errors; Chargebacks.** If you discover an error on your invoice, please notify us as soon as possible by either calling at (855) 337-4115 or emailing us at [billing@vacares.com](mailto:billing@vacares.com). We will honor invoice errors as long as we are notified of them within 90 days. If more than 90 days have elapsed, we may decline the refund request. If a refund is in order, it will go onto your account as a service credit to be used on a future invoice. Service credits have no cash value. If at any time you have questions or concerns regarding a charge from Vacares, please contact us at (855) 337-4115 or [billing@vacares.com](mailto:billing@vacares.com). Any chargebacks received will incur a \$50 investigation fee on the associated billing account and all services will be immediately suspended pending investigation. Vacares may reject the future use of payment methods from an account for which a chargeback has been previously issued. On receipt of a chargeback or payment reversal, the account related to the payment may be suspended or terminated.
- 6.12 **No Refunds.** Fees are nonrefundable. You will be billed in full for the term in which you cancel, and no refunds will be provided for the unused part of that term. After any cancellation, however, you will continue to have access to the Services through the end of your current term. We may, in our sole discretion, provide a refund, discount, or credit to you in a specific instance, however the provision of credits in a specific instance does not entitle you to credits in the future for similar instances or obligate us to provide additional credits.

## 7. **Term and Termination**

- 7.1 **Term.** We are not required to perform the Services until we receive payment from you when you checkout through our web platform (the “Effective Date”). We will begin delivering the Services on the Effective Date and continue until terminated in accordance with section 7.2.
- 7.2 **Termination**
  - (a) **Termination for Convenience; Cancellation.** Either party may terminate the Services for convenience on 30 days prior written notice to the other party. Before cancelling, please contact us at [support@vacares.com](mailto:support@vacares.com) and request an escalation of your issue if your cancellation is due to unsatisfactory services or an unsatisfactory resolution to a previous issue.
  - (b) **Suspension or Termination by Vacares.** We may immediately suspend or cancel the Services without notice: (i) for a violation of this agreement or any of our Policies, (ii) for your failure to timely pay any amounts due, (iii) to prevent a service interruption by an Internet Service Provider or other network service provider, or (iv) to protect the integrity of Vacares’ network or the security of the Services. You are not entitled to notice or protest if we exercise these rights. On

termination, your account will be closed, data deleted, and all fees and charges due and payable must be promptly paid to us. Once your account is closed, we are not responsible to forward email or other communications or maintain any data backup that predates the termination date. If allowed, you are encouraged to keep the Services active during a transition period if you seek to forward your email or other communications. If we suspend or terminate your use of our Services because you have violated this agreement, including any of our Policies, we will not provide you with a credit.

- (c) **Termination by You.** You may terminate the Services on the occurrence of a material breach by Vacares, which has not been cured within ten days of our receipt of written notice of that breach. Notice of a material breach must contain sufficient detail for us to identify the breach and attempt to take corrective action.

Regardless of the method of termination by you, valid proof of account ownership and authorization to cancel are required to terminate an account.

- 7.3 **Post-Termination Access.** If we are able to provide data from backup in an account that has been terminated, you will be subject to a one-time charge of \$150 plus data charges that may apply due to recovering the data from our third-party backup vendor. All data in accounts that are not renewed or are terminated will be removed from our servers and will likely be irretrievably lost.

- 7.4 **Surviving Terms.** The provisions stated in the following sections, and any other right or obligation of the parties in this agreement that, by its nature, should survive termination of this agreement, will survive any termination of this agreement: sections 9 through 16.

## 8. **Use of the Services**

Your use of the Services is governed by this agreement and our Policies, including our AUP. Vacares is not making any guarantee that the Services will be uninterrupted or continuous, that you will be able to access Vacares' network at a particular time, or that any data transmitted by Vacares is accurate, error free, virus free, secure, or inoffensive.

## 9. **Testimonials**

You may provide us with a written or verbal endorsement of our Services in connection with your use of the Services ("Endorsement"). The Endorsement will be the actual first-hand account of your experience using our Services and we may, at our discretion, use the Endorsement to promote our Services in-person, in print, online, and in any other media. We may also edit the Endorsement for brevity or other reasons, so long as it is consistent with your original Endorsement. In connection with our use of your Endorsement, you agree that we may use your first name, last initial, home state, voice or likeness, or contact information in connection with our publication of the Endorsement. If at any time you want us to stop using your Endorsement, please contact us at [support@vacares.com](mailto:support@vacares.com) and we will stop using the Endorsement soon after processing your request.

## 10. **Data Backup**

The Services do not replace the need for you to maintain regular data backups or redundant data archives. You acknowledge that it is solely your responsibility to regularly back-up and maintain copies of your data outside of Vacares' network. Vacares has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of customer data, including that resulting from: (a) our authorized actions; (b) those actions you take using the Services; (c) hardware failures; (d) any software or other technology failures; or (e) account termination, cancellation, or suspension.

## 11. Licenses; Intellectual Property; Data Ownership

- 11.1 We hereby grant you a nonexclusive, nontransferable, nonpublicable, worldwide, royalty free license to use the Services and technology under the terms of this agreement and our Policies, including the AUP. This license terminates when you or Vacares terminates the Services.
- 11.2 All interest in Vacares' technology remains with Vacares or its licensors. You are not permitted to circumvent any devices designed to protect Vacares, or its licensors', ownership interests in the technology provided to you. In addition, you will not reverse engineer this technology.
- 11.3 As between you and Vacares, Vacares acknowledges that it claims no proprietary rights in or to your Website Content supplied by you for use on your website. "Website Content" means all audio, visual, audiovisual, and digital content and information provided by or on behalf of you or any End Users to be included on, or delivered by or through, your website, including illustrations, graphics, photographic images, music, sound effects, lyrics, narration, text, film, data, video, animation, characters, interface layouts, designs, and downloadable software code. You hereby grant Vacares, and any third parties used by Vacares to provide the Services, a nonexclusive, nontransferable, worldwide, royalty free license to copy, make derivative works, display, perform, use, broadcast, disseminate, transmit, and cache Website Content, technology, and information provided by you and, if applicable, End Users, in conjunction with the Services.
- 11.4 Content ownership or account ownership disputes sometimes arise between or among multiple persons claiming ownership or rights in content hosted by us. We are not obligated to resolve any such disputes. If multiple persons are claiming ownership of rights in content hosted by us and in our sole judgment, there is not certainty as to the ownership of rights in that content or account, then we will, to the extent of our knowledge and ability, notify those persons of the dispute and demand that those persons promptly, conclusively, and finally resolve the dispute in a manner that makes clear who the owners or interest holders are and in a manner that relieves us of all liability or obligations concerning the dispute. If the disputing persons fail to resolve the dispute within what we, in our sole judgment, deem to be a reasonable time, then we, at our option and without any obligation to do so, may, in accordance with and subject to Texas law, file an interpleader action in a federal or state court of competent jurisdiction within Texas for the purpose of allowing the contending persons to resolve that dispute and to reach certainty regarding ownership of or rights in that site or account. The person or persons conclusively and finally determined by the interpleader action to be the rightful owner or interest holder of that site or associated account will be obligated to reimburse

us for all our expenses related to that interpleader action including all our court costs and reasonable attorneys' fees. All amounts owed to us will be deemed due and payable immediately on 30 days after judgment or settlement is reached in that interpleader action. Failure of the rightful owner of that site or associated account to cause us to be timely paid in full all those amounts will be deemed a breach of this agreement, will subject the account to immediate termination, and will entitle us to a judgment against that rightful owner for all costs and all our expenses relative that interpleader action including all our court costs and reasonable attorneys' fees. Nothing in this paragraph diminishes any other rights of us enumerated in any other section of this agreement or otherwise available to us at law or in equity.

11.5 For information on how we share data and other personal information, please see our Privacy Policy, located at [https://vacares.com/legal/Privacy\\_Policy.pdf](https://vacares.com/legal/Privacy_Policy.pdf).

## 12. **Limited Warranty**

Vacares warrants that it will perform the Services in accordance with prevailing industry standards. To make a warranty claim, you must notify Vacares in writing, specifying the breach in reasonable detail, within 30 days of the alleged breach. Your sole remedy, and Vacares' sole obligation, in the case of a breach of warranty is, at Vacares option, to (a) reperform the Services or (b) issue you a credit based on the amount of time the Services were not in conformity with this warranty, subtracted ("pro-rated") by the amount of time they were in conformance. **Services provided by third parties are expressly excluded from this warranty.**

## 13. **Your Representations and Warranties**

13.1 You will reasonably cooperate with us to facilitate your use of the Services. This cooperation includes providing us with correct contact and billing information and ensuring that you, your employees, or agents have sufficient technical expertise to understand how to implement the Services.

13.2 It is your responsibility to ensure that you can connect with us to use the Services. You state that you, or the entity you represent, has the sophistication and technical skill to use the Services.

13.3 You state that you have full authority and power to agree to the terms of this agreement and our Policies on behalf of the company you represent, if any.

13.4 You state that neither you nor your company have been identified or listed as Specially Designated National or Blocked Person by the U.S. Department of Treasury, Office of Foreign Assets Control.

## 14. **Disclaimers**

14.1 Except for the limited warranty in section 12, the Services are provided "as is." Vacares specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement, and all warranties arising from course of dealing, usage, or trade practices. Vacares is not making any warranty of any kind that the Services, or any products or results of the use of the Services, will meet your or any other

person's requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system, or other services, or be secure, accurate, complete, free of harmful code, or error free.

- 14.2 Vacares is not liable, and expressly disclaims any liability, for the content of any data transferred either to, or from, you or stored by you or any of your End Users via the Services provided by us. Vacares is not responsible for any loss of data, for any reason. Vacares is not liable for unauthorized access to, or any corruption, erasure, theft, destruction, alteration, or inadvertent disclosure of data, information, or content transmitted, received, or stored on its network.
- 14.3 Vacares is not liable, and expressly disclaims any liability, for data breaches or data compromise caused by your failure to keep software or web applications including plugins up to date or otherwise take proper security measures.
- 14.4 Vacares specifically disclaims all warranties regarding services provided by third parties, regardless of whether those services appear to be provided by Vacares. No warranties, either express or implied, made by these third parties to Vacares will be passed through to you, nor will you claim to be a third-party beneficiary of those warranties.
- 14.5 Some jurisdictions do not allow Vacares to exclude certain warranties. If this apply to you, your warranty is limited to 90 days from the Effective Date.

## 15. **Limitation of Liability**

- 15.1 It is your obligation to ensure the accuracy, integrity, title or ownership, and security of anything you receive from the Internet. You acknowledge that Vacares has no liability for content you or your customers access from the Internet.
- 15.2 Except as otherwise provided in section 15.6, in no event will Vacares or any of its licensors, service providers, or suppliers be liable under or in connection with this agreement or its subject matter under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, and otherwise, for any: (a) loss of production, use, business, revenue, or profit or diminution in value; (b) impairment, inability to use, or loss, interruption, or delay of the Services, other than for the issuance of any applicable service credits; (c) loss, damage, corruption or recovery of data, or breach of data or system security; (d) cost of replacement goods or services; (e) loss of goodwill or reputation; or (f) consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages, regardless of whether those persons were advised of the possibility of those losses or damages or those losses or damages were otherwise foreseeable, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 15.3 Notwithstanding anything to the contrary contained in this agreement, Vacares will not be liable for any indirect or consequential damages, including damages for lost profits, loss of opportunity, loss of sales, or loss of search engine rank, suffered by you, your End Users, your clients, and your visitors, during periods of scheduled maintenance, service suspension, and violation of this agreement or the Policies.

- 15.4 Except as otherwise provided in section 15.6, in no event will the aggregate liability of Vacares arising out of or related to this agreement, whether arising under or related to breach of contract, tort (including negligence), strictly liability, or any other legal or equitable theory, exceed the total amount paid to Vacares under this agreement in the three-month period preceding the event giving rise to the claim. The foregoing limitations apply even if any remedy fails of its essential purpose.
- 15.5 Vacares will not be held responsible for any: (a) force majeure events described in section 18.7, (b) problems or service outages caused due to reboots during standard maintenance periods, or (c) scheduled downtime. Our Uptime Guarantee described in the Service Level Agreement, located at [https://vacares.com/legal/Service\\_Level\\_Agreement.pdf](https://vacares.com/legal/Service_Level_Agreement.pdf), does not apply to disruptions to your use of the network because of a violation of this agreement or the Policies.
- 15.6 The exclusions and limitations in section 15.2 and section 15.4 do not apply to Vacares' obligations under section 16 or liability for Vacares' gross negligence or willful misconduct.

## 16. **Indemnification**

- 16.1 You will indemnify, defend, and hold harmless Vacares and its personnel, parent, subsidiaries and affiliated companies, third-party service providers, and each of their respective officers, directors, employees, shareholders, and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including reasonable attorneys' fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to (a) your use of the Services, including any data migration-related efforts you request from Vacares personnel or authorize Vacares personnel to conduct; (b) any violation by you of this agreement or any of the Policies, including those violations that result in a disruption of the network; (c) any breach of any of your representations, warranties, or covenants contained in this agreement or the Policies; or (d) any actions or omissions by you. The terms of this section will survive any termination of this agreement or the Services. For the purpose of this paragraph only, the term used to designate "you" includes you, your customers, visitors to your website, and users of your products or services, the use of which is facilitated by us.
- 16.2 Vacares will indemnify and hold you harmless from, and at its own expense will defend or at its option settle, any claim, suit, or proceeding brought or threatened against you so far as it is based on a claim that Services provided by Vacares under this agreement infringes any U.S. patent, copyright, or trademark. This indemnification provision is expressly limited to Services that are fully owned by Vacares. It does not extend to products or services provided by third parties. If contained and permitted in its agreements with third-party suppliers, Vacares will flow down applicable intellectual-property indemnification provisions to you. This paragraph will be conditioned on your notifying Vacares promptly in writing of the claim and giving Vacares full authority, information, and assistance for the defense and settlement of it. If an infringement claim has occurred, or in Vacares' opinion is likely to occur, Vacares may, at its option and

expense, either to: (a) procure for you the right to continue using the Services; (b) replace with the Service, regardless of manufacturer, performing the same or similar function as the infringing Service, or modify the Service so that it becomes non-infringing; or (c) if neither of the foregoing alternatives is reasonably available, immediately terminate the infringing or affected Services and refund the fees charged by us for the period in which the Services were unavailable.

## 17. Notices

- 17.1 Notices will be sent to you at the email address in your account. It is your obligation to ensure that we have the most current email address for you by keeping your account information up to date.
- 17.2 Please refer to our website, <https://www.vacares.com/>, for contact information for most issues, including technical support and billing. Notices regarding this agreement and our Policies should be directed to [legal@vacares.com](mailto:legal@vacares.com).

## 18. General

- 18.1 **Entire Agreement.** This agreement and the documents it incorporate by reference, including the Policies, constitute the entire agreement between you and Vacares regarding the subject matter of this agreement and governs your use of the Services and supersedes all earlier written or oral discussions, negotiations, proposals, undertakings, understandings, and agreements between the parties regarding the subject matter of this agreement.
- 18.2 **Amendment.** Vacares may change this agreement on one or more occasions, on condition that changes will not apply to ongoing disputes or to disputes arising out of events occurring before the posted changes. Vacares will notify you through its website or by email of any changes to this agreement. Changes will become effective when posted. It is your responsibility to check periodically for changes to this agreement. If you continue to use the Services after any change, Vacares will consider your continued use as acceptance of the change unless you notify it in writing of your disagreement and the reasons for your disagreement no later than 15 days after the change. Vacares will contact you no later than 15 days after receiving the notice to address your disagreement and try to reach a mutually amicable resolution. If Vacares is unable to resolve your disagreement, your sole remedy is to terminate this agreement.
- 18.3 **Assignment and Delegation.** You will not assign any of your rights under this agreement without Vacares' advance written consent. You will not delegate any performance under this agreement without Vacares' advance written consent. Any purported assignment of rights or delegation of performance in breach of this section 18.3 is void.
- 18.4 **Waivers.** The parties may waive any provision in this agreement only by a writing signed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated.

A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

**18.5 Severability.** The parties intend as follows:

- (a) that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (b) that if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, the entire agreement will be held unenforceable;
- (c) that if an unenforceable provision is modified or disregarded in accordance with this section 18.5, then the rest of the agreement will remain in effect as written; and
- (d) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

**18.6 Compliance with Law**

- (a) U.S. export laws apply to your use of the Services. It is your obligation to confirm that your use of the Services complies with applicable laws, and we encourage you to learn more about U.S. export laws to ensure that your use of our network complies with these laws. More information about U.S. export laws may be found at [www.export.gov](http://www.export.gov).
- (b) We may disclose information, including information that you may consider confidential, to comply with a court order, subpoena, summons, discovery request, warrant, regulation, or government request or to protect our business, or others, from harm. We assume no obligation to inform you that we have provided this type of information unless we have affirmatively agreed to do so. In some cases, we may be prohibited by law from giving that notice. Cooperation with civil litigants is at our discretion. Responding to requests for production of documents and other matters requiring more than mere ministerial activities on our part will incur a fee of \$200 per hour. We do not honor requests from civil litigants that expenses be pre-approved, and we may require a deposit to secure payment.

**18.7 Force Majeure.** Except for the obligation to pay monies due and owing, neither party will be liable for any delay or failure in performance due to events outside the party's reasonable control, including third-party service failures, software failures, hardware failures, distributed denial of service (DDoS) attacks, acts of God, bandwidth interruptions, general network outages, earthquake, labor disputes, shortage of supplies, riots, war, fire, epidemics, or delays of common carriers. The obligations and rights of the excused party will be extended day-to-day for the period equal to the period of the excusable delay. The party affected by an excusable delay will notify the other party as

soon as possible, but in no event later than ten days from the beginning of the event.

- 18.8 **Governing Law; Submission to Jurisdiction.** Texas law governs the validity, interpretation, and performance of this agreement and our Policies as if performed wholly within the state and without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the state of Texas. Any legal suit, action, or proceeding arising out of or related to this agreement, the Policies, or the Services will be instituted exclusively in the federal courts of the United States or the courts of the state of Texas in each case located in the city of Austin and County of Travis, and each party irrevocably submits to the exclusive jurisdiction of those courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to that party's address of record will be effective service of process for any suit, action, or other proceeding brought in any such court.
- 18.9 **Jury Trial Waiver.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this agreement, the Policies, or the Services.
- 18.10 **Attorneys' Fees.** If any action, suit, or other legal or administrative proceeding is instituted or brought by either party against the other party arising out of or related to this agreement, the Policies, or the Services, the prevailing party will recover its reasonable attorneys' fees and court costs from the non-prevailing party.
- 18.11 **Limited Time to Bring Claims.** A party will not bring a claim arising out of or related to this agreement, the Policies, or the Services more than one year after the cause of action arose. Any claim brought after one year is barred.
- 18.12 **No Third-Party Beneficiaries.** Except as otherwise stated in this agreement, this agreement does not, and the parties do not intend it to, confer any rights or remedies on any person other than the parties to this agreement.
- 18.13 **Successors and Assigns.** This agreement binds and inures to the benefit of the parties and their respective successors and assigns.
- 18.14 **Electronic Signature.** You acknowledge that any affirmation, assent, or agreement you send through Vacares' website in response to a prompt binds you. You further acknowledge that when you click on an "I agree," "I consent," or other similarly worded "button" or entry field using a mouse, keystroke, or other computer device, this action is the legal equivalent of your handwritten signature and binds you in the same way.