# RapidBIZ Cloud Development Platform License and Services Agreement

This RAPIDBIZ DEVELOPMENT PLATFORM AGREEMENT (this "Agreement") is made effective as of the date you (User) signs into VACAVA's RapidBIZ Development Platform Interface and the agreement is by and between VACAVA Inc a Delaware corporation ("VACAVA"), and the User or User Company ("User" or "You"). VACAVA and User may be referred to individually as a "Party" and collectively as the "Parties".

**Recitals**

WHEREAS, VACAVA has designed and developed a software application development platform ("RapidBIZ Platform" or "Services") to enable Users to develop and deploy software applications for the purposes of development and testing in preparation for deployment to a production RapidBIZ Platform and where VACAVA will store and manage data associated with applications developed on the RapidBIZ Platform.

WHEREAS, User wishes to use the RapidBIZ Platform for the development of software applications that may be used in connection with the Users business, and where User understands and agrees that the RapidBIZ Platform is only for the development of applications, not the production use of applications. User understands and agrees that applications ready for production use will need to be moved by User, using RapidBIZ Platform tools, to a production RapidBIZ Platform which is covered under the RapidBIZ Cloud Runtime Platform license.

WHEREAS, the Parties intend to enter into a RapidBIZ Platform license and services agreement pursuant to which, as expressly provided herein:

    A.  VACAVA will make available to User the RapidBIZ Platform.
    B.   Client will use the RapidBIZ Platform in accordance with and subject to the terms of this Agreement.

WHEREAS, in furtherance of the objectives set forth above, the parties hereto desire to enter into this Agreement.

**Agreement**

# Section 1. Certain definitions

**1.1.** "Intellectual Property Rights" mean all inventions, discoveries, trademarks, patents, trade names, copyrights, moral rights, jingles, know-how, intellectual property, software, shop rights, licenses, developments, research data, designs, technology, trade secrets, test procedures, processes, route lists, computer programs, computer discs, computer tapes, literature, reports and other confidential information, intellectual and similar intangible property rights, whether or not patentable or copyrightable (or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, registrations of and

extensions, divisions, renewals and reissuance of, any of the foregoing, and rights therein, including without limitation (a) rights under any royalty or licensing agreements, and (b) programming and programming rights, whether on film, tape or any other medium which a Party owns or for which has a right to use.

**1.2.** "Person" means any natural person, legal entity, or other organized group of persons or entities. (All pronouns whether personal or impersonal, which refer to Person include natural persons and other Persons.)

## Section 2. Terms

**2.1.** RapidBIZ Platform License. Subject to the terms and conditions of this Agreement, VACAVA hereby grants to User a limited, non-exclusive license for User to use the RapidBIZ Platform as delivered in the Cloud.

**2.2.** Team Development. Users from the same company or group are required to purchase pay for licenses after the single free developer license.  VACAVA reserves the right to audit suspected abuse of the RapidBIZ Platform.

**2.2.** Additional Features and Interoperability. The RapidBIZ Platform also provides functionalities, tools, API's and code examples as set forth in the RapidBIZ Help and other documentation provided to enable User to create software applications with the RapidBIZ Platform. User shall be solely responsible for the development and deployment of features, functions and capabilities of the RapidBIZ Platform.

**2.3.** Support Services. VACAVA will provide support services on the RapidBIZ Platform in accordance with its Service Level Guarantee.

**2.4.** VACAVA Help. User may consult with a VACAVA RapidBIZ developers on the use of RapidBIZ and/or but not limited to "how to" advice where the User may be provided with code examples.  User understands and agrees that VACAVA is in no way responsible for how the information, whether verbal advice or code examples, is used in User application.

## Section 3. Ownership and branding; Third party licenses

**3.1.** Ownership of the RapidBIZ Platform is and at all times shall remain the sole and exclusive property of VACAVA and of all rights and interests to the RapidBIZ Platform and of any and all Intellectual Property Rights related thereto.

**3.2.** VACAVA shall remain the sole and exclusive owner of all rights and interests to the VACAVA software and Services and all Intellectual Property Right related thereto.

## Section 4. Service fees

**4.1.** License and Activation Fees. The first User license is provided at no cost. Additional User licenses are available and User shall pay VACAVA license and activation fees for the Services

as provided on the VACAVA Web site at http://www.VACAVA.com An overview of pricing for the Services is available to all visitors to the VACAVA Web site at http://www.VACAVA.com.

**4.2.** Payment Terms – The first development User is free ("Free User") of charge and no payment or payment information is required.

**4.3.** Payment Terms -   When additional User Licenses are purchased ("Pay For Licenses"), use of the RapidBIZ platform is purchased as a monthly subscription with no required commitment beyond a month.  Payment for services shall be paid with any valid credit card that is accepted by VACAVA. VACAVA also accepts ACH debits from User bank accounts.

Pay For Licenses must be paid in advance prior to User usage of the RapidBIZ Platform. Access to the RapidBIZ Platform shall be enabled once User remits payment. Access to the RapidBIZ Platform shall be disabled should User become delinquent in paying the monthly subscription fees if User is purchasing RapidBIZ Platform on a subscription pricing plan. If User is on a monthly subscription plan, User credit card will be charged on the anniversary day of the User initial sign-up date in each subsequent month following the initial month of subscription. If VACAVA modifies its pricing structure, VACAVA will use reasonable efforts to notify User prior to implementing such changes.

Checks will only be accepted for prepayments of Services upon approval by VACAVA. All payments shall be made in U.S. dollars. User authorizes VACAVA to set up reoccurring monthly charges against User Credit Card or User bank account and charge such credit card or debit such bank account for the continuing usage of existing RapidBIZ Platform or the future usage of the RapidBIZ Platform. Users account will be disabled if VACAVA is unable to charge User credit card for Services rendered or future Services purchased. VACAVA will attempt to notify User of our intent to suspend access to the RapidBIZ Platform prior to such suspension taking effect.

**4.4.** Refunds. There shall be no refunds for the unused portion of any pre-paid billing period. When User elects to upgrade or otherwise modify the RapidBIZ Platform in such a way that increases the License Fees due to VACAVA, User will be charged on a pro-rated basis for the current billing period.

**4.5.** Unused free first developer licenses.  VACAVA reserves the right to suspend access to any free developer licenses that are unused after 30 days of no usage or activity. VACAVA will attempt to notify User of our intent to suspend access.  VACAVA will shut down the User RapidBIZ Platform 10 days after suspended access if we have not heard from User directly. VACAVA will not store or save any User works that were done on the RapidBIZ Platform – it will be deleted and will not be recoverable.

## Section 5. Intellectual property rights

**5.1.** User Property. User is or shall be the exclusive owner of and shall retain all right, title and interest to all Intellectual Property Rights that User, respectively, owns or has the right to use (the "User Property").

**5.2.** User Developed Applications.  Applications developed on the RapidBIZ Platform are the property of the User. User understands that exported applications may only run on a RapidBIZ Platform runtime, and VACAVA has no obligation to make or cause the application to run on any other runtime or such deployment environment.

**5.3.** VACAVA Property. VACAVA is the exclusive owner of and shall retain all right, title and interest to all Intellectual Property Rights that VACAVA, respectively, owns or has the right to use (the "VACAVA Property").

      1.  VACAVA may, upon its sole discretion, provide User with code examples, example applications or screen templates.  When provided by VACAVA to User, User may use the code examples, example applications or screen template(s) in the development of the User application and when used in the User application, VACAVA has not right to the derived work that incorporates code examples, example applications or screen template(s) provided by VACAVA.

      2.  VACAVA may be requested by User to provide extended function, features or capabilities in the RapidBIZ Platform that may be used in the development of User applications. Any function, feature or capability that extends the RapidBIZ Platform is the sole property of VACAVA and may become a base RapidBIZ Platform function, feature or capability that may be available to all users that license the RapidBIZ Platform.

**5.4.** Cooperation. Each party agrees to take all action and cooperate as is reasonably necessary, at the other party's request and expense, to protect the other's respective rights, titles, and interests specified in this Section 5 and further agrees to execute any documents that might be necessary to perfect each party's ownership of such rights, titles, and interests.

**5.5.** Access to User's RapidBIZ Platform by VACAVA – VACAVA shall have no access to the User's RapidBIZ Platform except to perform stated services; such as back up, monitoring, etc.

**5.6.** VACAVA Right to Audit – VACAVA reserves the right to verify the User is complying with the Pay For Licenses subscription count.

# Section 6. Warranties; Representations; Indemnities

**6.1.** User represents and warrants that:

1. it has the full power and authority to enter into and fully perform this Agreement.
2. it owns or controls all right, title, and interest in and to all Data that is created or input into the RapidBIZ Platform.
3. the Data and the use thereof pursuant to this Agreement shall not violate any law or infringe upon or violate any rights of any Person.

**6.2.** VACAVA represents and warrants that:

1. it has the full power and authority to enter into and fully perform this Agreement.
2. it owns or controls all right, title, and interest in and to all Intellectual Property Rights therein, necessary to carry out its obligations hereunder and to grant and assign any rights and licenses granted to User herein.

**6.3.** Indemnification. User agrees to indemnify, defend (at VACAVA's request) and hold harmless VACAVA and each of its respective agents, officers, directors, employees, affiliates and subcontractors from and against any and all third party claims, suits, liability, damages

and/or costs (including without limitation reasonable attorneys fees and costs) (collectively, "Claims") arising from or with respect to:

1. User breach of any warranty and/or representation of User under this Agreement; or
2. User performance of or failure to perform any obligation under this Agreement.

**6.4.** Limitation on Liability. VACAVA shall not be liable for any damage, liability or loss resulting from a cause over which such entities do not have direct control, including but not limited to the failure of electronic or mechanical equipment or communication lines - including internet connections, telephone or other interconnect problems, unauthorized access or theft.

# Section 7. Confidentiality

The terms of this Agreement and information and data that either party has received or will receive from the other party and other matters relating to the respective businesses of the parties is proprietary and confidential information of the disclosing party ("Confidential Information"), including without limitation any information that is marked as "confidential" or should be reasonably understood to be confidential or proprietary to the disclosing party and any reference manuals compiled or provided hereunder. Each party agrees that for the Term and for two (2) years thereafter, it will not disclose to any third party nor use for any purpose not permitted under this Agreement any Confidential Information disclosed to it by the other party. The nondisclosure obligations set forth in this Section shall not apply to information that the receiving party can document is generally available to the public (other than through breach of this Agreement by the receiving party) or was already lawfully in the receiving party's possession at the time of receipt of the information from the disclosing party.

# Section 8. Term, termination and remedies

**8.1.** Term. Subject to the termination provisions in this Section 8, this Agreement shall begin on the Effective Date and shall end upon termination as provided herein (the "Term").

1. By User. User shall have the right to unilaterally terminate this Agreement at any time upon advance written notice to VACAVA.
   a. User shall have the right to export any and all applications and associated data developed on User's RapidBIZ Platform using the RapidBIZ Platform standard tools.
   b. User understands that exported applications may only run on a RapidBIZ Platform runtime, and VACAVA has no obligation to make or cause the application to run on any other runtime or such deployment environment.
2. By VACAVA. VACAVA shall have the right to unilaterally terminate this Agreement, without any notice, if User:
   a. breaches any material term or condition of this Agreement, and has failed to cure such breach within ten (10) days after written notice of such breach.
   b. becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of its creditors;

c. is the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or

d. becomes the subject of any involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

**8.2.** Mutual Termination. This Agreement may be terminated by the written consent of both Parties.

User may terminate this Agreement at any time notifying VACAVA in writing or by sending an email message to support@VACAVA.com or by sending written notice to, VACAVA, Inc. at 3131 Superior Dr NW, Rochester, MN 55901.

Upon termination by either party, no payments from User held by VACAVA shall be refunded at the time of termination and User shall have no recourse against VACAVA in relation to non-refunded funds. VACAVA may delete any User data and/or applications developed on the RapidBIZ Platform within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, indemnity, warranty disclaimers and limitations of liability.

**8.3.** Effects of Termination. In the event of termination, the obligations of the Parties under Sections 5, 6 and 7 shall survive the termination of this Agreement.

# Section 9. General

**9.1.** Assignment. This Agreement will be freely assignable by either party to any entity controlling, controlled by or under common control with such party. Each party agrees to provide to the other party prompt written notice of any such assignment. This Agreement may not be assigned by either party to an unrelated third party without the prior written consent of the other party, which will not be unreasonably withheld.

**9.2.** Governing Law; Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State. Each party hereto irrevocably submits to the exclusive jurisdiction of (a) the Supreme Court of the State of Minnesota, or (b) the United States District Court for the State of Minnesota, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby or thereby

**9.3.** Severability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances.

**9.4.** Notices.

1. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent, postage prepaid, by registered, certified or express mail or reputable overnight courier service and shall be deemed given when so delivered by hand, or if mailed, three days after mailing (one business day in the case of express mail or overnight courier service), as follows:

- if to VACAVA:

  3131 Superior Dr NW

  Rochester, MN 55901

- if to User, to the email address provided by User in connection with User's registration as an User.

2. VACAVA reserves the right to modify the RapidBIZ Platform agreement.

**9.5.** No Partnership. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**9.6.** Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of such right.

**9.7.** Entire Agreement. This Agreement, along with the additional documents that may be linked and incorporated by reference and include the VACAVA Privacy Policy, and Service Level Guarantee, all available at http://www.VACAVA.com and other Web provided resources, contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. Neither party shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein.

**9.8.** Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to each of the other parties.

**9.9.** Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, any two parties hereto may waive compliance by the third party with any term or provision of this Agreement that such third party was or is obligated to comply with or perform.

**9.10.** Headings. The headings contained in this Agreement or in any Exhibit or Schedule hereto, or linked document, as applicable, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or any linked documents referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit or

linked documents but not otherwise defined therein, shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section, Exhibit, Schedule, or linked document, such reference shall be to a Section of, or an Exhibit, Schedule to, or document linked to this Agreement unless otherwise indicated.