**HATCH APPS**

**SOFTWARE AND SERVICES LICENSE AGREEMENT**

This SOFTWARE AND SERVICES LICENSE AGREEMENT (“Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) between Hatch Technologies, Inc., (“Hatch Apps”), principally located at \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_ (“Licensee”), principally located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Hatch Apps and Licensee each shall be considered a “Party” and shall be collectively referred to as the “Parties”.

This Agreement, including the General Terms and Conditions and the Additional Terms and Conditions applicable to Licensee’s specific Orders hereunder, describes the legal framework under which Licensee may license Services from Hatch Apps. All references in this Agreement to the “sale” or “purchase” (or other similar terms) of any Services shall mean the sale or purchase of a license to such Services.

In full and complete consideration, the Parties hereby agrees as follows:

**Certain Definitions**

“**Applicable Privacy Laws**” means, in relation to any personal information that is processed in the provision of the Services, the applicable legislation on the protection of identifiable individuals, including where applicable the Gramm-Leach-Bliley Act found at 15 U.S.C. Subchapter 1, §6809(4), and the EU Data Protection Directive 95/46/EC, (as may be superseded by Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) and/or other applicable data protection or national/federal or state/provincial/emirate privacy legislation in force, including where applicable, statues, decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable government authorities.

## **“Application”** means the application developed by Licensee and submitted to an application store via use of the Services.

## **“Authorized User”** means any individual (including Licensee’s employees, agents, contractors, suppliers of services, and customers, in each case to the extent that Licensee’s license includes, and Licensee pays for, such individual) who is authorized to access the Services and exercise the rights licensed by Licensee. Each Authorized User must use a unique identity to access and use the Services unless otherwise licensed, and may access the Services only to the extent licensed by Licensee.

**“Dashboard”** means a web dashboard of additional services to support Licensee in the development of their app and audience.

## **“Delivery”** means the availability of the Services by Hatch Apps to Licensee via electronic or other means, without regard to when Licensee actually installs or uses such Services.

## **“Documentation”** means the instruction manuals, user guides, and other information to be made available from time to time by the Hatch Apps in either printed or electronic form to the Licensee.

**“Licensee Data”** means non-public data provided by Licensee to Hatch Apps to enable the provision of the Services.

## **“Subscription Services”** means the maintenance and hosting of an application during the Term of this Agreement, including the Dashboard.

## **“Order”** means any document agreed to between the Parties which sets forth the Services licensed by the Licensee and any relevant pricing, including (i) any Hatch Apps quote which the Parties agree to make a part of this Agreement, (ii) any Licensee purchase order accepted by Hatch Apps, and (iii) any invoice issued by Hatch Apps and accepted by Licensee. Multiple Orders may be entered agreed to under this Agreement.

## **“Security Incident”** means any unlawful access to any Licensee Data stored on Hatch Apps’ equipment or in Hatch Apps’ facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Licensee Data.

## **“Services”** means the Subscription Services, the Dashboard, the Application and the Activation Services.

**General Terms and Condition**

# **1.** **Orders; Subscriptions; Delivery; Control; No Other Services.**

## 1.1 Orders. During the Term of this Agreement, and subject to Licensee’s compliance with the Terms and Conditions hereof, including the payment of the applicable fees, Licensee may subscribe to Services by the Parties agreeing to Orders that reference this Agreement.

1.2. Subscriptions. The Services are licensed pursuant to Subscriptions. Subscriptions will be for the term agreed to in an applicable Order. Subscriptions will automatically renew for successive terms of the same period of time as the original term at Hatch Apps’ then-current fees unless Licensee terminates a subscription as set forth in Section 8.

1.3 Delivery. The Services licensed by Licensee pursuant to this Agreement will be delivered electronically to Licensee by giving Licensee access to the Services. In the case of a renewal of a subscription, Licensee acknowledges and agrees that there is no delivery requirement for such renewal. Such renewals shall be deemed Delivered on the first day of the then-current Renewal Term of the applicable subscription.

1.4 Control of the Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Hatch Apps. Hatch Apps will provide and operate the Services in a professional and commercially reasonable manner in accordance with applicable law.

1.5 No Right to Professional Development Services. Licensee acknowledges and agrees that despite any other provision of this Agreement, nothing in this Agreement entitles Licensee to any software development or other services not expressly included in the Services. In the event that the Licensee requires additional integrations, security precautions or safeguards (e.g. in order to comply with HIPAA or GDPR), data collection, product features for the Application or Dashboard, manual work (e.g. uploading content or creating assets), connecting existing servers or databases, or other custom work beyond what is included in the Services, Hatch Apps has the right to refuse the work, to pass along the costs, or to quote the Licensee additional License Fees or Activation Fees. Any such services must be agreed to in writing in a separately negotiated agreement.

# **2.** **Ownership of Intellectual Property by Hatch Apps and by Licensee; License Grant; Restrictions.**

2.1 Ownership by Hatch Apps: Hatch Apps owns the Services, Documentation, its Website and its Work. The Services contain proprietary and confidential information of Hatch Apps and its licensors. Except to the extent licenses are expressly granted hereunder, Hatch Apps and its licensors retain all right, title and interest in and to all intellectual property rights (including patent, trademark, trade secret rights, inventions, copyrights, know-how and trade secrets) in and to the Services, and to any software, source code, metadata, applications, inventions, work product, designs or other technology developed in connection with the Services and support. In addition, any additional system software, and the content, organization, graphics, design, compilation, know-how, concepts, methodologies, procedures, and other matters related to Hatch Apps’ website are protected under applicable copyrights, trademarks and other proprietary rights. Hatch Apps shall own all right, title and interest in and to any intellectual property created by Hatch Apps in the course of providing the Services.

## 2.2 License Grant by Hatch Apps. Subject to and in consideration of timely payment by the Licensee of the license fee in accordance with Section 3 below, and of Licensee’s compliance with the other terms and conditions of this Agreement, Hatch Apps hereby grants to the Licensee, solely during the applicable term specified in an Order, a royalty free, limited, personal, non-exclusive, non-transferable license to: (i) access and use the Services via the Internet address provided to Licensee by Hatch Apps; and (ii) Use the Documentation.

## 2.3 Restrictions to License Grant by Hatch Apps. Licensee agrees that it (and its Authorized Users) will not without express written permission of Hatch Apps: (a) reverse compile, disassemble, decompile or engineer, copy, modify or adapt the whole or any part of the Services or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); (b) modify, translate, or create derivative works based on the Services or any Software; (c) make the Services available to, or use the Services for the benefit of, anyone other than Licensee; (d) assign, transfer, sell, resell, license, sublicense, distribute, rent or lease the Services, or include the Services in a service bureau or outsourcing offering; (e) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit; (f) perform or attempt to perform any actions that would interfere with the proper working of the Services, or prevent access to or use of the Services by Hatch Apps’ other licensees or customers; (g) upload or transmit to the Services any device, software or routine that contains viruses, Trojan horses, worms, time bombs, or other computer programming routines that may damage, interfere or attempt to interfere with, or intercept the normal operation of the Services; (h) access the Services for or upload to the Services anything unlawful, misleading, malicious or discriminatory; or (i) access or use the Services in order to build a competitive product or service. Although Hatch Apps has no obligation to monitor Licensee’s use of the Services, Hatch Apps may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Ownership by Licensee; License Grant by Licensee.

1. Except to the extent licenses are expressly granted hereunder, Licensee retains all right, title and interest in and to all intellectual property rights (including patent, trademark, trade secret rights, inventions, copyrights, know-how and trade secrets) in and to: (i) its products and services; (ii) the Licensee Data; (iii) any Licensee-provided design assets; and (iv) data collected from app users. Licensee represents and warrants that Licensee has all rights that are necessary to grant Hatch Apps the licensed rights in Licensee Data under this Agreement. Licensee also represents and warrants that neither Licensee Data, nor the inclusion of Licensee Data in the Services, will infringe, misappropriate or violate a third party’s Intellectual Property Rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
2. Licensee hereby grants to Hatch Apps a non-exclusive, transferable and sublicensable (solely as set forth herein), worldwide, royalty-free license to use, copy, modify, create derivative works based upon, distribute, publicly display and perform Licensee Data as reasonably required to operate and provide the Services.
3. In addition, and despite anything to the contrary in this Agreement, Hatch Apps shall have the right to collect and analyze Licensee Data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Licensee’s use of the Services and data derived therefrom), and Hatch Apps will be free (during and after the term hereof) to (i) use such information and data for the purpose of analytics and to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Hatch Apps offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

# **3.** **Fees; Payments.**

## 3.1 Fees; Limitation on Refunds. Licensee will pay Hatch Apps the then-applicable fees for the Services as set forth in Exhibit A (the “Fees”). Except in the case of material breach of this Agreement by Hatch Apps or as otherwise expressly permitted by this Agreement, all payments accrued or made under this Agreement are non-cancelable and nonrefundable.

## 3.2 Invoicing, Payment and Receipts. Unless otherwise provided for in an applicable Order, Hatch Apps will invoice Licensee annually in advance. Payment is due within thirty (30) days of Licensee’s receipt of an undisputed invoice. In the case of non-payment, Hatch Apps may, at its sole discretion: (i) suspend Licensee access to the Services; (ii) terminate this Agreement; or, (iii) continue to provide the Services, for a period solely determined by the Hatch Apps, in anticipation of full and prompt payment by Licensee. Any amount which is unpaid when due shall be subject to interest equal to the lower of 1.5% per month or the highest applicable legal rate. Hatch Apps shall be entitled to reimbursement for any costs associated with the collection of any past-due balance.

3.3 Usage Exceeding Ordered Services. If Licensee’s use of the Services exceeds the service capacity or otherwise requires the payment of additional fees (per the terms of this Agreement), Licensee shall be billed for such usage and Licensee agrees to pay the additional fees in the manner provided herein. Hatch Apps reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current Renewal Term, upon thirty (30) days’ prior notice to Licensee (which may be sent by email). If Licensee believes that Hatch Apps has billed Licensee incorrectly, Licensee must contact Hatch Apps no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Hatch Apps’ Licensee support department.

3.4 Delays; Change of Scope. If Licensee requests a change to any Services that represents a material change, extension of, and/or increase in the volume of Services, Hatch Apps shall notify Licensee of any additional costs associated with such changes and Licensee shall have two (2) business days to approve of such costs in writing (email to suffice). Hatch Apps shall not be required to continue deployment without such approval and, if requested by Hatch Apps, an amendment, revised insertion order, or other form of written agreement detailing such changes, executed by Licensee (or Agency on behalf of Licensee) and Hatch Apps. In the event Licensee does not approve of such costs, then each parties’ respective rights and obligations pursuant to this Agreement will remain unmodified.

3.5 Change of Scope. Furthermore, following meaningful consultation with Licensee, Hatch Apps shall establish the deployment schedule for the Services (“Deployment Schedule”) as more fully described in Exhibit C, which shall include due dates for Licensee feedback and approval (“Feedback Date(s)”), a launch date for each item of the Services (each, a “Launch Date”), and the date that is two (2) weeks following each Launch Date (“Extension Date”). If Licensee feedback and/or approval fails to comply with the Production Schedule such that the launch of one (1) or more items of the Services does not launch on or before the Extension Date is delayed, Hatch Apps shall notify Licensee in writing (email to suffice) of such delay, and Hatch Apps shall have the right to charge Licensee: (a) five percent (5%) of the total line item(s) in the Agreement (“Extension Fee”) if any item of the Services has not launched on or before the respective Extension Date; and (b) an additional Extension Fee (i.e. an additional five percent (5%) of the original total custom content line item(s) in the Agreement) for each week that launch of such delayed Services is delayed beyond the respective Extension Date. The parties agree to promptly execute a revised Order to reflect the Extension Fee(s) incurred by Licensee hereunder. Within thirty (30) days following Hatch Apps’s submission of a written request, Licensee shall either (at Licensee’s election) (A) pay Hatch Apps the Extension Fee(s) incurred by Licensee, or (B) enter into a non-cancellable Amended order (or revised Order) with Hatch Apps for an amount equal to no less than the amount of the Extension Fee(s) incurred by Licensee hereunder (or, in the event of a revised insertion order, the original Order amount in addition to the Extension Fee(s) incurred by Licensee hereunder). Licensee may elect to change the Feedback Date(s) (which shall be communicated to Hatch Apps in writing, email to suffice). Licensee shall not be permitted to change any Launch Date or Extension Date, except in the event that Hatch Apps is delayed (according to the Deployment Schedule) in delivering to Licensee/Agency one (1) or more items of Services for Licensee feedback and/or approval, and such delay by Hatch Apps was not caused by Licensee’s delay in providing feedback and/or approvals in a previous round for the same item of the Services. Any change to a Launch Date and/or Extension Date, as permitted herein, shall only extend such Launch Date and/or Extension Date for the length of such delay by Hatch Apps.

## 3.6 Taxes. All stated prices are exclusive of any taxes, fees, and duties or other amounts, however designated, and including without limitation value added and withholding taxes that are levied or based upon such charges, or upon this Agreement. Any taxes related to the Services or support services purchased or licensed pursuant to this Agreement including, but not limited to, withholding taxes, will be paid by Licensee, or Licensee will present an exemption certificate acceptable to the taxing authorities. Licensee will not be liable for taxes imposed on the Hatch Apps based on the Hatch Apps’ income.

# **4.** **Warranty and Disclaimer.**

## 4.1 Hatch Apps’ Warranty. Hatch Apps will perform the Services in a professional and workmanlike manner and in accordance with this Agreement. Despite the foregoing, the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Hatch Apps or by third-Party providers, or because of other causes beyond Hatch Apps’ reasonable control, but Hatch Apps shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

## 4.2 Disclaimer of Warranties That May Be Implied Under Certain Laws. EXCEPT AS MAY OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, HATCH APPS MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY SERVICES, DOCUMENTATION OR OTHER TANGIBLE OR INTANGIBLE MATERIALS PROVIDED UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ANY OTHER EXPRESS AND ANY IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT (INCLUDING IN SECTION 8.3), HATCH APPS DOES NOT WARRANT THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE OR THAT THE SERVICES WILL SUCCEED IN RESOLVING ANY PROBLEM.

# **5.** **Limitation of Liability.**

## 5.1 Limitation on Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS BASED UPON EITHER PARTY’S BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, AND SUBJECT TO SECTION 5.2, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF SUCH OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 5.2 Prohibition on Certain Damages. EXCEPT WITH RESPECT TO CLAIMS BASED UPON LICENSEE’S BREACH OF ITS LICENSED RIGHTS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL OR SPECIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, LOSS OF REVENUE, LOSS OR CORRUPTION OF DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF SUCH OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HATCH APPS SHALL NOT BE RESPONSIBLE FOR THE ACTIONS OR INACTIONS OF ANY THIRD PARTIES, INCLUDING THIRD PARTY HOSTING COMPANIES SUCH AS AMAZON, GOOGLE, MICROSOFT AND THE LIKE.

## 5.3 Maximum Liability. HATCH APPS’ LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY LICENSEE TO THE HATCH APPS UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING ANY CLAIM.

# **6.** **Indemnification by Licensee.**

## 6.1 Licensee will defend and indemnify Hatch Apps from and against any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable attorneys' fees) arising out of or relating to (1) a breach of this Agreement by Licensee or any Authorized User; (2) the intellectual property rights in any Licensee Data; (3) any loss, misuse, or disclosure of Licensee Data not the result of Hatch Apps’ misconduct or gross negligence; and (4) any other claim relating to any classified or personally identifiable information within Licensee Data, where such personally identifiable information (A) identifies or can be used to identify an individual, such as first and last name, social security number or other government issued number or identifier, date of birth, home or other physical address, e-mail address or other online contact information, telephone number, biometric data, mother’s maiden name, or other personally identifiable information; or (B) includes any “non-public personal information” as that term is defined in the Gramm-Leach-Bliley Act found at 15 U.S.C. Subchapter 1, §6809(4).

# **7. Confidentiality.**

## 7.1 Confidentiality. Each of the Parties hereto undertakes to the other to keep confidential all Confidential Information concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement. To qualify as Confidential Information, the disclosing Party must conspicuously mark the Confidential Information in tangible form as “confidential,” “proprietary” or similar words generally understood to communicate the confidential nature of the information. Where it is not possible to use such marking, or when the information is disclosed orally or visually, the disclosing Party must state at the time of disclosure that the information is Confidential Information, and when requested by the receiving Party, summarize in writing the Confidential Information within a reasonable time of such request, describing the disclosure in sufficient detail. Despite the foregoing, non-public information regarding features, functionality and performance of the Service, as well as Software, Application features, designs, templates, code base, or Dashboard capabilities, Licensee Data, and each Party’s product road maps, product development plans, pricing, business plans, customer lists, business and financial information shall be deemed to be Confidential Information, in each case whether or not marked or otherwise designated as confidential or proprietary.

## 7.2 Exceptions. Despite all of the foregoing, Confidential Information will not include any information which: (a) is already lawfully in the receiving Party’s possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving Party; (c) is disclosed to the receiving Party by a third Party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving Party as a matter of law (provided that the receiving Party will use all reasonable efforts to provide the disclosing Party with prior notice of such disclosure and to obtain a protective order therefor); (e) is disclosed by the receiving Party with the disclosing Party’s approval; or (f) is independently developed by the receiving Party without any use of Confidential Information.

## 7.3 Injunctive Relief. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the disclosing Party’s remedies at law for a breach by the receiving Party of its obligations hereunder may be inadequate and that the disclosing Party shall be entitled to seek equitable relief (including without limitation provisional and permanent injunctive relief and specific performance).

# 8. **Term and Termination.**

## 8.1 Term. This Agreement shall begin on the Effective Date and shall continue in force for the Initial Service Term set forth on Exhibit A. Thereafter, this Agreement shall automatically renew for additional one-year periods (each a “Renewal Term”) unless validly terminated as set forth herein. The Initial Term and all Renewal Terms collectively shall be referred to as the “Term”.

## 8.2 Termination.

### (a) Termination for Cause. This Agreement and any subscription may be terminated by either Party upon notice if the other Party (i) breaches any material term or condition of this Agreement and fails to remedy the breach within thirty (30) days after being given notice thereof, or (ii) ceases to function as a going concern or to conduct operations in the normal course of business, or (iii) has a petition filed by or against it under any bankruptcy or insolvency laws which petition has not been dismissed or set aside within sixty (60) days of filing. Hatch Apps may terminate this Agreement at any time upon its reasonable determination that Licensee’s Use of the Services violates any applicable law or regulation.

### (b) Termination for Convenience. Either Party may terminate this Agreement or any subscription for any reason upon written notice to the other Party (i) in the case of notice by Licensee given not less than thirty (30) days prior to the end of the then-current Term of the Agreement or the subscription or (ii) in the case of notice by Hatch Apps, at any time. No termination for convenience by Licensee, however, shall entitle Licensee to any refund of fees paid, or waiver of fees owed but unpaid, at the time of termination.

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## 8.3 Effect of Termination. In the event of a termination, Hatch Apps may remove Licensee’s Application from Apple’s App Store, the Google Play Store, and the web, and discontinue the Subscription Services. Hatch Apps agrees to transfer Licensee Data and any data collected from app users to the Licensee within forty-five (45) days in exchange for payment in full of the License Fees and Activation Fees for the Initial Service Term and a one-time conversion fee of $10,000. In the event of termination by Licensee for material, uncured breach of this Agreement by Hatch Apps, Hatch Apps shall refund to Licensee (on a pro rata basis based on the number of months left in any then-current Term) any License Fees paid for any portion of a Term occurring after the effective date of any such termination. Further, upon any termination or if in the case of Hatch Apps acquisition or merger, or if Hatch Apps is, unable to pay its debts or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction, Hatch Apps will make all those items as listed in 2.4(a) and Licensee’s instance of its source code available to the Customer for electronic retrieval (in a manner reasonable to both parties) for a period of ninety (90) days, after which time Hatch Apps no obligation to provide nor store any Customer Data.

## 8.4 Survival of Certain Provisions. Those provisions, which by their nature survive termination, shall continue after termination or expiration of this Agreement. Those provisions include, but are not necessarily limited to: Sections 2, 3, 4.2, 5, 6, 7 (for a period of 2 years after termination), 8.3, 8.4, 8.5, 9 and 13, all associated definitions, all accrued rights to payment and any terms and conditions of an exhibit applicable to a Subscription type which, by their nature, reasonably should survive termination.

## 8.5. Other Related Rights. Termination is not an exclusive remedy for breach of this Agreement by either Party. All other remedies will be available to the non-breaching Party whether or not the non-breaching Party terminates this Agreement for breach by the other Party.

# **9. Import and Export Regulations**. The Services may be subject to U.S. export controls, specifically the Export Administration Regulations. Both Parties shall comply with all relevant import and export regulations, including those adopted by the Bureau of Industry and Security of the U.S. Department of Commerce.

**10.** **Privacy and Security.**

10.1 Each Party agrees to abide by all applicable local, state, national, and international laws and regulations in connection with providing the Services, including, without limitation, all laws regarding the transmission of technical data exported from the United States through the Service and all Applicable Privacy Laws. Hatch Apps will employ commercially reasonable security measures. Despite the foregoing, Licensee acknowledges that the storage and process of data, and the assurances published by Amazon (including Amazon Web Services), Google Cloud Platform, and Microsoft (including Microsoft Azure) meet the requirements of this Section.

10.2 Licensee shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use the Licensee Data. Licensee grants to Hatch Apps a license store, record, transmit, maintain, and display the Licensee Data only to the extent necessary to carry out its obligations under this Agreement. Without limiting the foregoing, Hatch Apps shall have no liability to Licensee for any unauthorized access to, or use, corruption or loss of, any personal health information (“PHI”) or personally identifiable information (“PII”) which may be contained in the Licensee Data, except to the extent that such unauthorized access, use, corruption, or loss is judicially determined to be due to Hatch Apps’ neglect or misconduct or breach of the terms of this Agreement. Despite any other provision of the Agreement, in the case of loss or PII or PII due to actions or inactions of Hatch Apps, Licensee’s sole remedy shall be for Hatch Apps to restore such PHI and /or PII from the latest available backup.

10.3 If Hatch Apps becomes aware of any Security Incident, Hatch Apps will promptly (1) notify Licensee of the Security Incident; (2) take reasonable steps to mitigate the effects and to minimize damage resulting from the Security Incident; and (3) at Licensee’s request and cost, take commercially reasonable steps to assist Licensee in complying with its obligations under Applicable Privacy Laws pertaining to responding to a Security Incident.

10.4 Notification(s) of Security Incidents will be delivered in accordance with Applicable Law. Hatch Apps’ obligation to report or respond to a Security Incident under this section is not an acknowledgement by Hatch Apps of any fault or liability with respect to the Security Incident. Licensee must notify Hatch Apps promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the Services.

10.5 Hatch Apps shall promptly notify Licensee if Hatch Apps receives a request from a data subject to have access to personal information or any other complaint or request relating to Licensee’s obligations under applicable data protection laws. Hatch Apps shall provide reasonable assistance to Licensee to facilitate Licensee’s ability to respond to such request or complaint (including, without limitation, by allowing data subjects to have access to their personal information if such access is required by the applicable data protection laws, and where the personal information is not already available to the Licensee).

10.6 Each Party shall retain sole responsibility for such Party’s information technology infrastructure, including computers, servers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by such Party or through the use of third-Party services. Licensee shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”).

10.7 Licensee shall also be responsible for maintaining the security of the Equipment, Licensee account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Licensee’s account or the Equipment with or without Licensee’s knowledge or consent.

10.8. Licensee shall be responsible for obtaining all necessary permissions, licenses, clearances, and/or releases for Licensee’s intended use of the Services. Licensee is responsible for adhering to local laws and regulations, including those that relate to data privacy such as Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the European Union’s General Data Protection Regulation (“GDPR”).

# **11.** **Force Majeure.** Neither Party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, floods, earthquakes, pandemic or epidemic illness, strikes (of its own or other employees), insurrection or riots, embargoes, requirements or regulations of any civil or military authority.

**12.** **Publicity.** Either Party to this Agreement may publicize the existence of the business relationship established by this Agreement in connection with its products, promotions, or publications. Licensee grants Hatch Apps permission to use Licensee’s name and logo(s) in connection with promotion of Hatch Apps’ products and services. All representations of Licensee’s logo shall be exact copies of those used by Licensee in design, color and other details. Except as expressly set forth in this Section, nothing in this Agreement gives either Party any right, title or interest in the other Party’s logos, trademarks, service marks or trade names. Despite anything to the contrary, neither Party may disclose the specific terms of this Agreement, except as required by applicable law.

# **13.** **Miscellaneous.**

# The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have hereunder. All notices must be in writing and in the English language and will be deemed given only when sent by mail (return receipt requested), hand-delivered, sent by documented overnight delivery service to the Party to whom the notice is directed at its address indicated in the signature box to this Agreement (or such other address as to which the other Party has been notified), or sent by email to the email address as may be provided by one Party to the other from time to time. Despite any of the foregoing, notices of updates to license terms, terms of use, privacy terms or other terms related to Hatch Apps’ website and any product or service accessed via Hatch Apps’ website may be delivered by Hatch Apps posting such updates on its website or on its Dashboard. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. This Agreement shall be binding upon and inure for the benefit of the successors in title of the Parties hereto. Licensee shall not assign, transfer or sublicense this Agreement or any of its rights or obligations hereunder without the prior written consent of Hatch Apps, which consent shall not be unreasonably withheld in the case of the merger, acquisition or sale of all or substantially all of the assets of Licensee. Headings to paragraphs or sections in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia without regard to the conflict of law provisions thereof. The sole venue for all disputes relating to this Agreement shall be in the District of Columbia, USA. This Agreement does not, and is not intended to, confer any benefit on, nor create any right exercisable or enforceable by, any third Party. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing Party may be entitled. The Parties agree that each is an independent contractor and neither Party has the right or authority to assume or create any obligation or responsibility on behalf of the other Party. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which together will constitute one and the same instrument. This Agreement may be modified, replaced or rescinded only in writing, and signed by a duly authorized representative of each Party. THIS AGREEMENT, INCLUDING ALL ATTACHMENTS, SCHEDULES, EXHIBITS AND ALL APPLICABLE LICENSE AGREEMENTS, CONSTITUTES THE COMPLETE AND EXCLUSIVE UNDERSTANDING OF THE PARTIES, AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS SALES PROPOSALS, NEGOTIATIONS AND AGREEMENTS, ALL TERMS AND CONDITIONS INCLUDED AS PART OF ORDERS AND ALL OTHER REPRESENTATIONS OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE SUBJECT MATTER HEREOF. THE PARTIES AGREE THAT ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS CONTAINED ON, REFERENCED BY OR INCORPORATED INTO LICENSEE’S ORDER ARE EXPRESSLY REJECTED AND SHALL NOT BE CONSIDERED AN AMENDMENT TO THIS AGREEMENT.

# IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| **Hatch Apps** | **Licensee** |
| Hatch Technologies, Inc.919 18th Street NW, Suite 950Washington, DC 20006 | [Licensee name][address] |
| Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Print Name: **Param Jaggi** | Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: **Chief Executive Officer** | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Email address for Notices: notices@hatchapps.comEmail address for Billing: accounting@hatchapps.com | Email address for Notices: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Email address for Billing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit A**

**COMMERCIAL TERMS**

**Certain Definitions Applicable to the Commercial Terms**

A “Resubmission” or “Resubmit” means submitting to a Store for the second or subsequent time any Application which (i) was not successfully launched in a Store based on the initial Submission or (ii) otherwise requires re-approval by a Store (in either the Store’s or Hatch Apps’ determination). If Licensee’s Application is not successfully launched in any Store, and the reason for such lack of success is due to (i) Licensee’s or the Application’s failure to comply with any Store’s checklist, guidelines or other requirements or (ii) not otherwise due to the fault of Hatch Apps, then any Submission after the initial Submission shall be deemed to be a Resubmission.

A “Store” means either (i) Apple’s App Store or (ii) the Google Play Store.

A “Submission” or “Submit” means uploading a build of Licensee’s Application to a Store. Submissions will be submitted under an account name as determined by Hatch Apps.

**Description of Services; Fees**

**Activation Services**: Conditioned on reasonable cooperation from Licensee, Hatch Apps will use commercially reasonable efforts to Submit to a Store Licensee’s Application. Hatch Apps will forward to Licensee any relevant communication from the Store about the Submission. It is Licensee’s responsibility to ensure that the Application complies with a Store’s checklists, guidelines and other requirements. To the extent that the Application requires and qualifies to be Resubmitted, Hatch Apps will use commercially reasonable efforts to Resubmit Licensee’s Application subject to the Services Limitations set forth below.

**Activation Fee (one-time)**: USD [$X]

**License Fees**: USD [$X] per year, payable annually (the “License Term”) in advance, subject to the terms of Section 4 herein. If app exceeds the allotted credits, Licensee will be billed at-cost for the difference. Payments made by credit card are subject to a 3.5% convenience fee. During the

During the Subscription Term, Hatch Apps shall provide the following features as part of the Services.

* Platform Features
	+ User Management:
	+ Content Management:
	+ Analytics:
	+ Team Member Management:
	+ Broadcast Push Notifications:
	+ Email Notifications:
* Integrations
	+ Feature 1
	+ Feature 2
* Managed Services
	+ Dedicated Customer Success Manager
	+ App Store Management
	+ Web Domain Management
	+ AWS Hosting
	+ Database Management
	+ Data Security
	+ Mobile Operating System Updates
	+

**Initial Service Term**: [One (1) year], shall begin from the full execution of this Agreement.

During the Initial Service Term, Hatch Apps shall consult, advise, and help incubate Licensee’s mobile application that shall consist of:

* Feature 1
* Feature 2

**Payment Terms:** Net thirty (30) calendar days.

**Services Limitations; Additional Fees**

|  |  |  |
| --- | --- | --- |
| Service Description | Limitation | Fee for Exceeding the Limitation (billed monthly) |
| **Number of Submissions for initial Application approval**  | **3** | **$499 per submission** |
| **Amazon Web Service (AWS) credits, to be put towards hosting and storage** | **$0 / month** | **Billed to Licensee at Hatch Apps’ actual cost** |
| **Number of Authorized Dashboard Users** | **3** | **$50/month/Authorized User** |

**Exhibit B**

**Terms and Conditions Applicable to Support Services**

**General Description of Support Services**

Subject to each of the other provisions of the Agreement, Hatch Apps shall provide the following Support Services for the applicable term: the right of Named Contacts to submit support requests via email sent to support@hatchapps.com.

All support (including all support questions/comments) will be in the English language, and will provided during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays.

## Hatch Apps will use commercially reasonable efforts to respond to all support requests within one (1) business day, but Hatch Apps makes no guarantee regarding the time period for resolution.

**Named Contacts**

**“Named Contact”** means those Licensee-designated persons who have the right to contact Hatch Apps via email or phone for technical support and who act as the primary interface between Licensee’s Authorized Users and Hatch Apps technical support. Licensee may designate up to three Named Contacts. Licensee shall indicate to Hatch Apps (by email sent to support@hatchapps.com) those individuals who will serve as Licensee’s Named Contacts, and provide to Hatch Apps the name and email address of all Named Contacts. Hatch Apps shall have no obligation to address support requests submitted by anyone other than Licensee’s Named Contacts. By providing written notice (by email sent to support@hatchapps.com) and appropriate contact information, Licensee may change each Named Contact once per year for no additional fee.