



The Early Learning Experts

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Hatch, Inc. Software License Agreement

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Hatch may reinstate Licensee's access to the Licensed Product(s) at issue in the event Licensee cures the breach as set forth below but may require a reinstatement fee to cover the expenses for such process.

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- (c) Parent Information: first name, last name, email address and mobile phone number;
- (d) Teacher Information: first name, last name, email address and/or phone number, teacher identification number, organization identification number, and site location;
- (e) Administrator Information: first name, last name, email address and/or phone number, and site location

It is solely Licensee's responsibility to ensure that it has the express written consent to input such PII from its employees and student parents and guardians to the fullest extent required by law.

2.2. Data Hosting and Security. PII collected by the Licensed Products is uploaded daily to a hosted data site maintained by or on behalf of Hatch by a third-party service provider. Currently, Hatch uses Amazon Web Services, Inc. ("AWS") as the third-party service provider for data hosting. AWS has its own policies and procedures for handling and protecting data, which may be reviewed at https://aws.amazon.com/legal/?nc1=f_cc, the terms of which are incorporated by reference herein. When a user (whether Licensee, licensee's child, student, teacher or administrator, each an "Authorized User") logs into the Licensed Products, a copy of the relevant data will be made available locally for the Authorized User to use and access while logged in. When the Authorized User logs out, all information as modified by the user during the session is sent back to the hosted storage.

2.3. Data Usage.

(a) Personally Identifiable Information. Any and all PII collected by the Licensed Products is used solely to connect an Authorized User to their permitted access and profile to access and use the Licensed Products. The data collected from each Authorized User session is further used to calculate student learning progress and statistics, which are then made available to the applicable teachers and administrators. At Licensee's request, PII from the Licensed Products may be shared with Licensee's other service providers to allow Licensee access to more robust data regarding student progress and assessments.

(b) Aggregated Data. Hatch also collects and aggregates demographic and statistical information from the Licensed Products and the use of Licensed Products ("Aggregated Data"). Aggregated Data is altered in such a way so that is not identifiable as any individual or as Licensee. This Aggregated Data is used solely to facilitate the development of updates and new products, to handle support issues and for marketing the benefits of the Licensed Products to potential licensees.

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(a) FERPA and PPRA. Licensee understands and agrees that the data to be shared with Hatch may be subject to the Family Education Rights and Privacy Act ("FERPA") and the Protection of Pupil Rights Amendment ("PPRA"), which require among other things, parental notice, and consent to the sharing of information with Hatch and the availability of opt-out requirements. Hatch represents that the Licensed Products are compliant with FERPA and PPRA to the extent Hatch has control over the use of the Licensed Products. However, Licensee is responsible for (i) its own compliance with FERPA and PPRA, including using the Licensed Products in a manner that complies with Licensee's own obligations under FERPA and PPRA, and (ii) ensuring that Licensee's sharing of any information with Hatch, and the use of information Licensee receives from Hatch as contemplated by this Section, is permitted under FERPA and PPRA for the uses contemplated above.

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3.1. Term. This Agreement will begin when (i) Licensee or Authorized User clicks "ACCEPT" tab associated with this Agreement, (ii) this Agreement is executed by both Parties and will remain in full force and effect until the expiration of all licenses granted under this Agreement as contemplated in the Order, unless terminated earlier as provided below, or (iii) Licensee or an Authorized User accesses and uses the Licensed Products. Any subscription-based licenses will renew upon payment of the applicable annual fees by Licensee, provided such payment is received by Hatch prior to the expiration of the then-current term.

3.2. Termination for Breach. Unless otherwise agreed in writing, either Party may terminate this Agreement and any licenses granted under this Agreement if the other is in material breach of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice identifying the breach. The termination is not a sole and exclusive remedy and will not prejudice the rights and remedies of the non-breaching Party, who will have all other rights and remedies available to it under law.

3.3. Effect of Termination. Upon termination of this Agreement for any reason, Hatch may disable Licensee's or any Authorized User's access to the Licensed Products. In addition, in the event Licensee has any physical copy of any Licensed

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6.1. Limited Warranty. Hatch agrees that it has the rights and authority to provide the licenses under this Agreement to Licensee. In addition, Hatch represents and warrants that the Licensed Products, when used as permitted under this Agreement and in accordance with the instructions in the Documentation, will perform in substantial compliance with the Documentation for a period of thirty (30) days following delivery by Hatch. In the event of a nonconformance with or breach of this warranty, Licensee must notify Hatch in writing and if such notification is received by Hatch within the warranty period, Hatch will in its discretion either (i) provide an additional copy of such Licensed Products to remedy the nonconformance or (ii) will use commercially reasonable efforts to identify an error correction or work around to minimize the impact of the nonconformity, which in either case is Hatch's sole and exclusive liability and Licensee's sole and exclusive remedy for such nonconformance and/or breach.

6.2. Warranty Exclusions. The foregoing warranties in subsection (a) will not apply if (i) the Licensed Product(s) is used with hardware or software not provided by Hatch or specified in the Documentation, (ii) any modifications are made to the Licensed Products or Hardware by Licensee or any third party, (iii) the nonconformance is due to accident, abuse, misuse, neglect, or improper use of the Licensed Products or Hardware by Licensee or its users, (iv) reported nonconformities cannot be reproduced by Hatch, or (v) the Licensed Products or Hardware are provided on a no-charge or evaluation basis.

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Section 7. Limitation of Liability.

7.1. Limits. Except for a Party's willful misconduct and indemnification obligations, each Party, to the maximum extent permitted by applicable law, expressly and irrevocably waives, and neither Party has or will have any liability in respect of, any and all claims for lost profits, loss of business, loss of revenue, loss of data, costs of procurement of substitute goods or services, or any indirect, incidental and consequential damages, that in any way relate to this agreement, licensed products, documentation or services, whether or not such Party has been advised of the possibility of such damages and notwithstanding the failure of the essential purpose of any remedy. In no event will Hatch's liability to licensee for any damages exceed the fees paid to Hatch by licensee within the twelve (12) months immediately preceding the events giving rise to the damage. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to licensee to the extent prohibited by law.

7.2. Basis of the Bargain. The Parties agree that Hatch has set its prices and entered into this Agreement in reliance on the limitations of liability in this Section, which allocate the risk between Licensee and Hatch and form a basis of the bargain between the Parties.

Section 8. Export and Re-Export Laws and Regulations.

Export of Licensed Products is subject to all applicable countries' export and re-export laws and regulations. Licensee may not export or re-export, either directly or indirectly, Licensed Products when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval.

Section 9. Indemnification.

9.1. General Indemnification. Licensee agrees to indemnify, defend and hold harmless Hatch and its respective parent, affiliates, employees, agents, contractors, assigns, licensees, and successors in interest ("Indemnified Parties") from any and all claims, losses, liabilities, damages, fees, expenses, and costs (including attorneys' fees, court costs, damage awards, and settlement amounts) that result from any third party claim or allegation against any Indemnified Party arising from (i) Licensee's actual or alleged violation of any laws, rules, regulations, or ordinances, including any violations of state or federal privacy laws; (ii) Licensee's actual or alleged breach of this Agreement; or (iii) Licensee's misuse or unauthorized use of any Licensed Products or Hardware.

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any third party, or (iii) accident, abuse, misuse, neglect, or improper use of the Licensed Products or Hardware by Licensee or its users.

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10.1. Notices. All notices must be communicated in English and personally delivered or sent by certified or registered mail or reputable express courier service, addressed to the Parties at their addresses set forth below, or at such other address as either Party may designate to the other by notice served as hereby required, or contained in the relevant order form, or sent by facsimile transmission to the facsimile machine telephone number provided by the receiving Party, if confirmed by an alternate method.

Hatch, Inc.
Attn: Customer Care
301 N Main Street
Suite 100
Winston-Salem, NC 27101
CustomerCare@HatchEarlyLearning.com

10.2. Force majeure. Neither Party will be liable for failure to perform its obligations under this Agreement (excluding any obligation as to payment of fees), if such failure results from causes beyond its reasonable control such as acts of God, acts of terrorism, fire, explosion, third party strikes or labor disputes, delays by vendors or manufacturers, governmental acts, staff unavailability due to illness or airline flight delay or similar causes.

10.3. Severability. In the event any part of this Agreement is found to be invalid, illegal or unenforceable in any respect, such provision will be modified by the Parties to the minimum extent necessary to make it valid, legal and enforceable. Should such modification provide impossible or impracticable, the offending provision will be stricken, and the remaining provisions will nevertheless be binding to the fullest extent permitted by law.

10.4. Transfer, Assignment & Subcontract. Licensee may not assign, delegate, or otherwise transfer (including without limitation, by way of merger or contribution) any or all its rights, duties, benefits or obligations under this Agreement without the prior written consent from Hatch. This Agreement is binding upon and will inure to the benefit of each Party's permitted successors and assigns.

10.5. Amendments & Non-Waiver. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement is binding unless made in writing and signed by the Parties. A Party's failure at any time or times to require performance of any provision hereof in no manner affect its right later to enforce such provision.

10.6. Audit. For Licensees that are organizations or entities, Licensee must, during the term of this Agreement, establish and maintain accurate records relating to the use, and when applicable, destruction of the Licensed Products, and keep such records available for a period of three (3) years after the term of this Agreement. During the term of this Agreement and for a period of three (3) years thereafter, Hatch has the right at any time upon at least ten (10) days advance written notice, at its own expense and under reasonable conditions of time and place during normal business hours, in a manner that minimizes disruption to its business, to inspect and copy these records applicable to the Licensed Products and the use of the Licensed Products. Licensee acknowledges that Hatch is entitled to verify its compliance with the terms of the Agreement. If the audit reveals that a material nonconformance with the terms of this Agreement by Licensee, Licensee will promptly reimburse Hatch for the cost of the audit as well as any outstanding fees that may be due for use of the Licensed Products in excess of that authorized by this Agreement.

10.7. U.S. Government Restricted Rights Legend. If Licensee is an agency or unit of the U.S. Government, the Licensed Products are commercial items, specifically "commercial computer software" and, consistent with FAR 12.212 and DFARS 227.7202, as applicable, are licensed to Licensee only with those rights as are granted pursuant to this Agreement.

10.8. Entire Agreement. This Agreement, including any Order as accepted by Hatch, is the complete agreement between the Parties and supersedes all prior and contemporaneous proposals, agreements, understandings, representations, purchase orders and communications, whether oral or written. Licensee acknowledges that it has not relied on the future availability of functionality or product updates with respect to any Licensed Products in entering into this Agreement. Except as expressly permitted in this Agreement, this Agreement may be modified only by written amendment signed by the Parties and no other act, document, usage, or custom will be deemed to amend or modify this Agreement, including but not limited to Licensee's terms and conditions.

10.9. Governing Law and Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of North Carolina, without regard to any conflict of laws principles and excluding application of the United Nations Convention for the International Sale of Goods. Any dispute will be submitted to the exclusive jurisdiction of the federal or state courts of competent jurisdiction with jurisdiction over the Middle District of North Carolina and Forsyth County, North Carolina. In the event of a breach or contemplated breach of Hatch's intellectual property rights or confidential information, Hatch may seek injunctive relief without the posting of a bond, proof of damages or other similar requirement.

10.10. Survival. The following sections of this Agreement will survive any termination or expiration: 2, 3, 4, 5, 6, 7, 8, 9 and 10.

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Signature Page

HATCH, INC



William E. Hess,
President

Address for Notices

Hatch, Inc.
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Attention: William E. Hess

LICENSEE

Signature
Printed Name: _____

Title: _____

Address for Notices

Attention: _____