

## TWIXL PUBLISHER GENERAL TERMS AND CONDITIONS (USA ONLY)

These General Terms and Conditions (“GTC”) govern Your use of Twixl Publisher. By using Twixl Publisher You explicitly agree to these GTC and agree that no other terms apply, except if agreed in writing between You and Twixl media BVBA.

Twixl media BVBA (“Twixl”) is a Belgian company with registered offices at Kortrijksesteenweg 1144, box N, 9051 Ghent, Belgium and registered at the Crossroads Bank for Enterprises under the number 0892.553.121. Our contact information is available on our website <https://twixlmedia.com/en>.

Twixl may sometimes be referred to herein as “Licensor”, “We” or “Us”.

Your company is referred to herein as “Licensee” or “You”.

We may both be referred to herein individually as a “Party” and jointly as the “Parties”.

### 1. DEFINITIONS AND INTERPRETATIONS

In addition to the terms defined elsewhere in these GTC, capitalized terms used in these GTC have the meaning set out below:

<b>Annex(es)</b>	Means the annexes to these GTC;
<b>App(s)</b>	Means the software single- and multi issue applications created and developed by using the Software, including the Web Reader.
<b>Authentication Credentials</b>	Means the personal login and password that enables the Licensee to log in to the Distribution Platform;
<b>Beta Release</b>	Means a version of the Software which is released to test the new features and to fix bugs in the Software and related services, all within the setup of Licensee, in order to eliminate remaining bugs which were not detected during the Licensor’s own testing procedures.
<b>Builder</b>	Means the computer program which is part of the Software and which allows You to create applications and to generate HTML versions of the Content;
<b>Confidential Information</b>	Means any and all information and data disclosed by either Party to the other in the context of these GTC, whether such information or data is stored on electronic media, including both written and oral information and data. Information disclosed in the course of discussions between the Parties shall constitute “Confidential

	Information” subject to these GTC if, (i) in the case of information disclosed in written or other tangible form, the information when disclosed is clearly labeled as “confidential” or with a similar legend, (ii) in the case of information disclosed orally, the disclosing Party notifies the receiving Party of the confidential nature of the information at the time of oral disclosure and (iii) in any case, for both information disclosed orally and/or in writing, the Party receiving such information should reasonably be aware of the confidential character of the information;
<b>Content</b>	Means any copyrighted or otherwise protected material, including but not limited to reports, articles, studies, drawings, images, photos, audiovisual works, notes, charts, presentations, notifications and manuals, which is created by the Licensee and made available via Apps or within a web browser;
<b>Distribution Platform</b>	Means the Twixl platform that enables the Licensee to manage the distribution of Content within its Apps in different app stores or in-house or within a web browser. More specifically, the Distribution Platform can handle the storage of Content, to support in-app purchases and subscriptions, to manage downloads, to provide detailed analytics information and to communicate with the readers using push-notifications. As an option it also can manage restricted access and entitlement and the possibility to integrate with external content management systems and content sources.
<b>Force Majeure Event</b>	Means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected Party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the Party claiming Force Majeure complies with the requirements of Section 18 (Force Majeure Event). Subject to the foregoing, "Force Majeure Event" shall include, but is not limited to, explosion and fire (in either case to the extent not attributable to the gross negligence of the affected Party), flood, earthquake, storm or other natural calamity, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence), deficient energy or telecom network supply and changes in laws, rules, regulations, orders or ordinances, which events were not

	pending on the date of these GTC;
<b>InDesign Plugin</b>	Means the plugin for Adobe InDesign that enables You to enrich the Content, to preview and share the Content and to export it for publication;
<b>Intellectual Property Rights</b>	Means copyrights, trademarks, service marks, patent rights, trade secrets and all rights of whatsoever nature in computer software, applications, texts, images, drawings and manuals, in every case in any part of the world and whether or not registered;
<b>Know How</b>	Means the accumulation of skills, processes and experience previously developed relating to the Software and Apps, including, but not limited to, any and all technical information, formulas, specifications, trade secrets, test results, studies, analyses, manufacturing data, formulation or production technology and any other information necessary or useful in the manufacture, sale and use of the Software and Apps, whether patented or not;
<b>Maintenance Release</b>	Means a release of the Software that corrects faults;
<b>Professional Device(s)</b>	Means any piece of electronic equipment, including but not limited to computers, laptops, tablets and mobile smart phones, that are made available by the Licensee to its employees and independent staff in order to fulfill their professional obligations;
<b>Software</b>	Means the Twixl Publisher software, <i>i.e.</i> the copyright protected works as defined in Annex 1, including InDesign Plugin and Builder;
<b>Territory</b>	Means the entire world;
<b>Update(s)</b>	Means any version update, release or functionality enhancements in relation to the Software or any substantially similar software, including without limitation any Maintenance Release;
<b>Urgent Maintenance Obligation</b>	Means any unforeseeable and unexpected system failure that causes the Distribution Platform to become completely or to a large extent unavailable;

<b>Web Reader</b>	Means the HTML package, which is generated by the Software, to be published within a web browser.
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## 2. LICENSE

2.1. The Licensor hereby grants to the Licensee a non-exclusive, non-transferable, non-sublicensable and non-assignable right to use the Intellectual Property Rights vested in the Software in accordance with the provisions of these GTC, in order to allow the Licensee to use the Software and its functionalities as described in Annex 1, including the right to create Apps, within the Territory.

More specifically, the right to use the Software includes:

- The right to download the Software from dedicated online platforms;
- The right to install the Software on any Professional Device, as further described in Section 2.7;
- The right to use the Software in commercial or non-commercial ways, in order to create and develop Apps and share content.

2.2. The Software allows the Licensee to create and develop Apps. The Licensee can upload Content via the App and share it with its users. These Apps qualify as copyright protected works. The Parties hereby explicitly agree that:

- the Apps and the Intellectual Property Rights therein remain in the Licensor's ownership; and
- the uploaded Content and the Intellectual Property Rights therein remain in the Licensee's ownership.

2.3. The Licensor hereby grants to the Licensee a non-exclusive, non-transferable, non-sublicensable right to use the Apps and the Intellectual Property Rights vested in the Apps in accordance with the provisions of these GTC, in order to allow the Licensee to use the Software and its functionalities as described in Annex 1, including the right to create Apps, within the Territory.

More specifically, the right to use the Apps includes:

- The right to communicate the Apps in whole or in part to the public;
- The right to make the Apps in whole or in part available to the public; and
- The right to sell, rent and lend the Apps in whole or in part.

- 2.4. Nothing in these GTC shall be construed to grant the Licensee any right or license in any Intellectual Property Right of the Licensor other than as expressly specified herein. All rights not specifically granted to the Licensee are hereby expressly reserved by the Licensor.
- 2.5. The Parties explicitly agree that the Licensor may continue to use the Intellectual Property Rights vested in the Software and the Apps to the fullest extent (including but not limited to the right to use, exploit, license, assign) in the Territory.
- 2.6. Licensee is obligated to inform the Licensor of any infringement of the Software or the Apps by third parties in the Territory, as soon as possible after becoming aware of such infringement.
- 2.7. The Licensee is only authorized to use the Intellectual Property Rights vested in Software and the Apps on Professional Devices within one legal entity. Any use of the Software and the Apps on devices personally owned by the employees or independent staff of the Licensee or by another legal entity, even in case of affiliated companies, is strictly forbidden.
- 2.8. The Licensee is forbidden to remove or alter the copyright notice from the Software and Apps.
- 2.9. The Parties shall cooperate using their best efforts in order to execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this license.
- 2.10. The Licensee is not obliged to share its experience in using the Distribution Platform or the Software or related services; however if the Licensee chooses to do so and Twixl acts upon such information, ideas, tips, etc. the Licensee is in no way entitled to remuneration for sharing such, even if Twixl implements these in its products or services or makes any other use thereof.
- 2.11. In case the Licensee downloads a free trial license for InDesign Plugin and Builder and creates a test account on the Twixl Distribution Platform (the “**Trial**”), Twixl does not guarantee any functionalities. In relation to Trials, the Licensee is in no event entitled to any sort of remuneration or compensation for any sort of damages or claims. A Trial is only valid for a maximum of 60 days. Trials are only allowed for internal review of Twixl’s services and products. The Licensee is not allowed to use the Trial to publish any content. Twixl may terminate Trials at any time (including during the 60 day period) without warning and without compensation. The use of the Trial is at the Licensee’s own and sole risk and responsibility.

### **3. UPDATES**

- 3.1. Twixl may from time to time make available Updates related to the Software, InDesign Plugin and the Builder. These Updates will not be installed automatically. It is strongly recommended for You to install the Updates as soon as they are available. Not installing Updates may lead to malfunctions or functionality issues of the Software, Apps and/or Web Reader. Updates will be made available on Twixl’s website or any other location as chosen and communicated by Twixl.

- 3.2. Twixl may decide at its own discretion whether or not to charge a fee for Updates. In case a fee is charged in connection with any Update(s), Twixl will communicate to You at least thirty (30) days in advance of the due date for such fee the amount due and will request Your agreement thereto. In case You do not agree to such fee, the Update will not be installed.
- 3.3. Updates on the Distribution Platform will automatically be implemented.
- 3.4. Once an Update has been made available by the Licensor, it shall be deemed part of the Software and Apps, as the case may be, and shall be subject to the terms and conditions of these GTC.

#### **4. DECOMPILING, DISASSEMBLING OR REVERSE ENGINEERING**

- 4.1. The Licensee acknowledges that the Software and the Apps are of great value to the Licensor and that it contains Confidential Information and Know How of the Licensor.
- 4.2. The Licensee may not decompile, disassemble or otherwise reverse engineer the Software and the Apps or engage in any other activity in order to obtain underlying information that is not visible to the user in connection with a normal use of the Software and the Apps, or create derivative works based on any portion of the Software or the Apps, unless expressly authorized under applicable law.
  - 4.2.1. In particular, the Licensee agrees not to transmit the Software or display the Software's source or object code on any computer screen or to make any hard copy memory dumps of the Software's source or object code.
  - 4.2.2. If the Licensee requires information related to the interoperability of the Software and the Apps with other programs, the Licensee shall request such information from the Licensor and refrain from decompiling or disassembling the Software or the Apps in order to obtain such information. Upon receiving such a request, the Licensor shall determine in its sole discretion whether to provide such information to the Licensee.
  - 4.2.3. In case the Licensee is allowed to decompile, disassemble or reverse engineer, the Licensee shall notify the Licensor of any information derived therefrom. The results thereof will constitute Confidential Information and will be owned by the Licensor.

#### **5. LICENSEE'S CONTENT**

- 5.1. In accordance with Section 2.2., Parties explicitly agree that the Content will remain in full ownership of the Licensee.
- 5.2. The Licensor cannot be held responsible for any Content, not even if the Content is uploaded to the Distribution Platform or the Apps. The Licensee is at all times solely responsible for the Content and any damages that may be caused by the Content.

- 5.3. The Licensee shall not upload any Content that, in whole or in part, infringes third parties' rights (including but not limited to copyrights) or qualifies as illegal Content or violates the laws of any jurisdiction where the Content is stored, distributed or made available. The Licensee shall immediately remove such Content and immediately inform the Licensor thereof (i) after the Licensee becomes aware, or should reasonably be aware, that any Content is so infringing, illegal or unlawful, or (ii) after the Licensor requests the Licensee to do so, whichever occurs first.
- 5.4. In case the Licensee fails to comply with this obligation within a reasonable time upon notice, the Licensor retains the right at its own discretion to suspend or terminate Licensee's right to access the Distribution Platform and to publish content in his Apps, without being due damages for whatsoever losses that may or may not have occurred.
- 5.5. Content uploaded to the Distribution Platform is processed by the Distribution Platform to obtain one package per operating system (iOS, Android) and per device type (Tablet, Phone). Licensor only stores and backs up these processed files and does not store or backup the Licensee's original files. The Licensee is responsible for organizing, at its own expense, storage and backup of the original source files.

## **6. SUBSCRIPTION FEE AND BANDWIDTH**

- 6.1. The Parties agree that the Licensee will pay the Licensor (or if applicable in accordance with Section 6.4, the local reseller) a subscription fee, as described in the Specs and Pricing Overview, available on our website (<https://twixlmedia.com/en/specs-pricing>) or available upon request. The subscription fee differs in accordance with the plan chosen by the Licensee when subscribing to our services.
- 6.2. Parties agree that the payment of the subscription fee covers the license as described in these GTC.
- 6.3. The remuneration is payable in line with the payment instructions as appear on our website during the subscription phase, on an invoice or any other document that the Licensor provides to the Licensee.
- 6.4. In case the subscription fee is to be paid to a local reseller, such reseller will communicate payment details to the Licensee, as agreed with the Licensor.
- 6.5. Licensor may change the subscription fee at any time. In case of a raise of the subscription fee, (i) such raise shall not apply to You until Your first subscription year that commences following the Licensor's announcement of such raise, and (ii) if the raise applicable to You for the following subscription year is more than ten percent (10%), then You may terminate Your subscription prior to the commencement of such subscription year (or if the Licensor's announcement of such raise of more than ten percent (10%) is made within sixty (60) days of the end of any subscription year, then within sixty (60) days from the date of such

announcement, in which case such increase shall not apply to You during such sixty (60) day period) and the portion of any prepaid subscription fee applicable to the remainder of the new subscription year will be refunded to You).

- 6.6. Part of the services provided by Twixl to the Licensee require the use of bandwidth. Bandwidth is the volume of data that is downloaded by readers of the multi-issue apps whenever they download Content. Bandwidth is limited and depends on the subscription chosen by the Licensee. Twixl will at different intervals inform the Licensee of the amount of bandwidth used. As soon as the amount of bandwidth is entirely consumed, the Licensee's Content may no longer be available for downloads, until payment is made of an additional fee. These fees and the amount of bandwidth are available on our website and upon request. The bandwidth volume that is included in the initial subscription expires at the end of a subscription period and cannot be carried over to a new subscription period, but unused additional bandwidth purchased for an additional fee will remain available as long as the Licensee remains subscribed. Unused bandwidth will not be remunerated at any time.

## **7. CONTENT PREVIEW AND SHARING**

- 7.1. Twixl makes available to the Licensee two different apps on iOS and Android that are part of the Software and that make it possible for the Licensee and the user to preview and share Content before publishing it in an app store or in-house app. Those apps are the Twixl Viewer Classic, to preview and share InDesign based content, and the Twixl App Reviewer, to preview and share article based multi issue Apps. Those apps are free and available in the Apple App Store and in Google Play. The terms of Section 5, "Licensee's Content", apply to the use of these apps.
- 7.2. The Licensee shall not upload any Content that is prohibited under Section 5.3. Content uploaded via the free apps described in Section 7.1 may at any time without notification and without liability be deleted by Twixl at its own discretion.

## **8. SOFTWARE TESTING**

- 8.1. Twixl highly recommends to fully test the appearance and functionality of an App before publishing it in the app stores or internally. For iOS, the Licensee needs to create an "Ad Hoc" build - this is a type of build that Apple created specifically to allow testing of apps before making them available publicly. For Android, the Licensee needs to generate a "test build" that can be sideloaded on an Android device.
- 8.2. Before making an Update available, the Licensor may decide to make Beta Releases available. Licensor strongly recommends against building and publishing Production Apps with a Beta Release, as such version is not complete or fully operational and may contain bugs.



## 9. SOFTWARE SECURITY

- 9.1. The Software is installed on Professional Devices beyond the control of the Licensor. The Licensee is responsible for the maintenance of its IT systems on which the Software runs and to install security systems.
- 9.2. To the Licensor's best knowledge, the Software is free from any virus, worm, Trojan horse or other contaminating, destructive or harmful computer code.
- 9.3. The Licensor confirms that it has taken and installed reasonable technical and organizational security measures in order to secure the servers on which the Distribution Platform operates to protect Content from unauthorized access, and, in any event, in a manner at least as protective as Licensor uses to protect its own information of a similar nature. Licensor shall not under any circumstances be liable for situations in which the security, stability or availability of the Distribution Platform is compromised by (a) the Licensee, (b) software, programs, Content or other computer information, if any, provided to the Licensor by the Licensee or (c) actions the Licensor undertakes at the request of the Licensee.

## 10. DISTRIBUTION PLATFORM

- 10.1. In case services require the use of the Distribution Platform, the following provisions apply:
- 10.2. **Conditions of use of the Distribution Platform:** The Licensee undertakes to use the Distribution Platform exclusively in connection with its professional business and for purposes related to it and in compliance with the provisions set forth in these GTC.
- 10.3. **Access to the Distribution Platform:** Through its personal Authentication Credentials the Licensee will have access to a personal account on the Distribution Platform from which it will be able to configure and manage all of its multi-issue applications created with its license.

The Licensee is responsible for maintaining the secrecy and confidentiality of its Authentication Credentials and will be held liable for any damages caused by the use of the Authentication Credentials by an unauthorized party.

The Licensee shall notify Licensor immediately of any theft, loss or appropriation of the Authentication Credentials. In such case, the Licensee will immediately reset the Authentication Credentials.

- 10.4. **Functionalities of the Distribution Platform:** Upon login in to the Distribution Platform, the Licensee will be redirected to its personal account page ("Account") where the Licensee is able to configure the interface of its article based applications, to organize the distribution of its Content in terms of which Content is published and which is not and which is published in which App, to configure its in-app purchases and subscriptions, to configure the analytics related to its apps and Content, to organize the restricted access to its Content, to manage the

connection of its Account with external content management systems and content sources, to set up and send push notifications, and to monitor the performance of its applications in terms of downloads, bandwidth use and use analytics.

- 10.5. The Licensor agrees to use reasonable commercial efforts to make available the Distribution Platform with an availability up-time rate of 99%, 24 hours per day and 365 days per year. However, the Licensor does not guarantee this up-time rate.

The Licensee acknowledges that the Licensor cannot be held responsible for the unavailability of the Distribution Platform:

- in case of a Force Majeure Event;
- in case of circumstances attributable to the Licensee;
- in case of circumstances attributable to third parties, including third parties instructed by Twixl;
- when the Distribution Platform or the Software is being maintained and/or upgraded.

The above circumstances will not be taken into account when calculating the availability up-time rate of the Distribution Platform.

The Licensor will notify the Licensee at least ten (10) calendar days before the execution of planned maintenance of the Distribution Platform. In case of an Urgent Maintenance Obligation no notification is required.

- 10.6. **Security:** To the Licensor's best knowledge the Distribution Platform is free from any virus, worm, Trojan horse or other contaminating, destructive or harmful computer code. The Licensor confirms that it has taken and installed reasonable technical and organizational measures in order to secure the servers on which the Distribution Platform is installed and the data which is stored on the Distribution Platform, including the Content.

- 10.7. Access to the Licensee's account on the Twixl Distribution Platform is password-protected. The Licensee can create its own administrator account with a login and password. The account administrator can manage the complete account, and has access to all Apps in that account. The account administrator can create 'app administrators' by App. Such app administrators only have access to the App(s) they have been given access to by the account administrator. Account administrators and app administrators are responsible for managing, keeping confidential and storing their passwords in a proper way. Licensor strongly recommends changing login and passwords on a regular basis.

10.8. Licensor does not have access to the Licensee's account on the Distribution Platform. For specific support purposes, Licensor may request access, to which the Licensee then needs to agree explicitly. It is the responsibility of the Licensee to provide access for support purposes and to limit that access in time.

## 11. AUDIT

11.1. The Licensor has the right at its own expense (i) to request and obtain information from the Licensee and (ii) to have the Licensee's administrative data inspected by a third party appointed by the Licensor at its own discretion in order to verify compliance by the Licensee with the terms and conditions of these GTC, including but not limited to whether the Software is installed or not on non-Professional Devices.

11.2. The Licensee shall render all necessary assistance and cooperation to facilitate such information request and inspection by the Licensor.

## 12. HELPDESK

12.1. The Licensor provides a helpdesk through which support is offered to the Licensee in order to resolve possible issues the Licensee encounters with the Software or the Apps. This helpdesk is accessible through the website <https://help.twixlmedia.com>. Unless the Parties otherwise agree in writing, the helpdesk responds to support tickets during the Licensor's business hours (9:00am-5:00pm in the Central European time zone), on the Licensor's business days.

12.2. The Licensor provides a website through which the functioning of the Software is explained (available at <https://help.twixlmedia.com>).

12.3. Support will consist of:

- **First line support:** questions regarding the use of the functionalities of the Software and the Apps; and
- **Second line support:** questions regarding technical issues with the Software and the Apps.

12.4. Support will not include:

- Installation services
- Integration services
- Training services

- On-site support services
- Application submission services

12.5. The Licensor will use reasonable efforts to resolve the problems with the Software and/or the Apps, without guaranteeing an (immediate) solution.

### **13. DATA PROTECTION**

13.1. Twixl qualifies as data processor as defined in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. Twixl will not process the personal data You share with Twixl for its own purposes, unless authorized by You. Twixl will process the personal data on Your behalf only and in the context of the present GTC and for the term of these GTC. Data about reading behavior is linked to pseudonymized accounts and not to natural persons.

13.2. We urge You not to share any sensitive personal data (in the sense of articles 9 and 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data).

13.3. You confirm that You will meet the obligations provided in the relevant data protection laws of any jurisdiction where You are active or where You make available the Content.

13.4. Twixl may rely on the services of service providers, such as hosting companies or cloud services companies, which may qualify as sub-processors. These sub-processors may be located in non European Economic Area countries and personal data may be transferred thereto. You agree to accept the use of such sub-processors.

13.5. Twixl refers to Section 9.3 as far as security measures are concerned.

### **14. COSTS**

14.1. Except as otherwise provided in these GTC, each of the Parties shall pay its own costs incurred in connection with these General Terms and Conditions.

### **15. TERM AND TERMINATION**

15.1. The GTC shall be effective as soon as the Licensee creates an account on the website and subscribes to our services.

- 15.2. The term of subscriptions differs and may be one, two or three years, depending on the plan chosen by the Licensee when subscribing to our services (or any other term as provided on our website), unless otherwise in the applicable service order with an authorized reseller. Each subscription is entirely invoiced at the beginning of the subscription and is due within thirty (30) days upon payment request or invoice. Subscription fees are not refundable.
- 15.3. The Licensor will invite the Licensee to renew its subscription 60 days, 30 days and 7 days before expiration of the subscription, depending on the plan the Licensee has chosen when subscribing to our services. If the Licensee chooses to renew, either by email or by placing an order, it will be invoiced for a new term and will need to pay this invoice before the expiration of the current subscription. If at the end of the term the Licensee does not renew its subscription, the license hereunder will automatically come to an end. If the provisions of the applicable service order with an authorized reseller conflict with the provisions of this Section 15.3, the provisions of the applicable service order shall control.
- 15.4. Licensor shall have the right to (i) suspend Licensee's access to the Twixl Distribution Platform and suspend the provision of services (i.e., the Licensee will be unable to publish any new content but the content that was already available to its readers remains available), if Licensee or Twixl's authorized reseller through which Licensee procured the Software fails to pay the subscription fees within five (5) days following the payment due date; and (ii) terminate (i.e., the Licensee will be unable to publish any new content and no content will be available) or suspend (at Twixl's own discretion) the Software license if the Licensee or Twixl's authorized reseller through which the Licensee procured the Software fails to pay the subscription fees within thirty (30) days following the payment due date. As soon as the Licensee pays its invoice, all terminated or suspended rights will be reinstated as if they were not terminated or suspended. In such case the subscription term will be deemed not to have been terminated or suspended and as such run for the remaining period.
- 15.5. In case the collaboration between the Parties subject to these GTC is terminated with immediate effect following a breach by Licensee of its obligations under these GTC, the Licensor will in no event owe any penalties to Licensee, nor will the fees paid under these GTC be reimbursed.

## **16. END OF THESE GTC AND OUR COLLABORATION**

- 16.1. Once the subscription expired, the Licensee will still be able to work with the InDesign Plugin and the Builder but will not have further access to the Distribution Platform and to Updates.
- 16.2. Single-issue applications will remain available in the app stores or in-house and will continue to function as long as they do not require any Updates. Multi-issue applications will remain available in the app stores or in-house but the access to the Content will no longer be available.
- 16.3. Content stored on the end-user device will still remain on the device as long as the app is installed but it will not be accessible through the app. All Content stored on the Distribution

platform will be kept for 30 days. If the Licensee decides to renew his license within this period the Content will again be made available.

## **17. CONFIDENTIAL INFORMATION**

- 17.1. Unless prior written consent is provided by the Licensor, the Licensee agrees and undertakes for the duration of the collaboration between the Parties as well as at any time thereafter to keep any Confidential Information and Know How concerning the Licensor or its activities which it has obtained in the framework of this collaboration strictly confidential and not to divulge or disclose any part thereof to any third party, except for employees, officers and directors of the Licensee and only then to the extent necessary for the proper performance by such personnel of their duties. In order to ensure that its personnel observe this provision, the Licensee shall require anyone with access to Confidential Information to sign a non-disclosure agreement.
- 17.2. The Licensee's obligations under this Section shall not include, and the restrictions under these GTC shall not apply to:
- any information known by the Licensee prior to its disclosure by the Licensor; or
  - any information which is in the public domain or hereinafter falls into the public domain through no fault of Licensee; or
  - any information that Licensee can demonstrate was independently developed by the Licensee without reference to the Confidential Information or Know How provided by the Licensor; or
  - any information disclosed to Licensee by a third party having the right to do so.
- 17.3. Upon termination or expiration of the collaboration between the Parties for any reason whatsoever, the Licensee shall immediately return to the Licensor any Confidential Information and Know How provided by the Licensor in connection with this Collaboration.
- 17.4. This Section 17 shall continue in full force and effect notwithstanding any termination or expiration of these GTC.

## **18. FORCE MAJEURE EVENT**

- 18.1. If a Force Majeure Event occurs, performance of the Parties' obligations under these GTC (save the duty of confidentiality described in Section 17) shall be suspended for the duration of the delay caused by the Force Majeure Event. The period of performance shall not be automatically extended with a period equal to the suspension. The Licensee will not be entitled to any penalty or damages for such suspension.
- 18.2. The Party claiming Force Majeure Event shall promptly inform the other Party to this effect in writing, explaining its reasons for doing so.

- 18.3. If a Force Majeure Event occurs, the Parties shall immediately consult one another with a view to finding an equitable solution and shall use all reasonable efforts to minimize the consequences of the occurrence. If the conditions of Force Majeure Event prevail for a period of three (3) months and the Parties have been unable to find an equitable solution, the other Party shall have the right to terminate the collaboration between the Parties without being due any penalty.

## 19. PUBLICITY

- 19.1. Unless expressly prohibited in writing, the Licensor may identify the Licensee on Twixl's customer lists and in its marketing and advertising materials, and announce that the Licensor is a Twixl customer, and reproduce the Licensee's company name, logo, trademark, trade name, service mark or other commercial designations in connection therewith. Upon the Licensee's prior written consent, the Licensor may develop and publish a case study based upon the Licensee's use of the Software. Such prior consent shall not be required for Twixl to disclose information about the Licensee in connection with any filings or disclosures required by Twixl under applicable local laws.

## 20. WARRANTY, DISCLAIMERS AND LIMITATION OF LIABILITY

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- 20.2. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE LICENSOR DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, THE APPS OR THE DISTRIBUTION PLATFORM, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Specifically, and not by way of limitation, the Licensee acknowledges and agrees that the Licensor does not warrant that the Software, the Apps or the Distribution Platform will function as described in any accompanying documentation.
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## 21. NOTICES

- 21.1. All notices and other forms of communication required under these GTC shall be in English, in writing and must be delivered or sent to the recipient (i) in person through a reputable courier service; (ii) by email with confirmation of receipt; or (iii) by registered mail (with an acknowledgement of receipt), in the case of notices to the Licensee's to its address set forth on its order form, and if to the Licensor to its address indicated hereunder (or any other address made available on the Licensor's website):

Twixl media BVBA  
Kortrijksesteenweg 1144 Box N,  
9051 Gent (Sint-Denijs-Westrem)  
Belgium  
email: [legal@twixlmedia.com](mailto:legal@twixlmedia.com)  
website: [www.twixlmedia.com](http://www.twixlmedia.com)

- 21.2. Any notice shall be deemed to have been delivered to the recipient's address on the date of delivery if delivered by hand, five (5) days following the mailing date if sent by registered mail and the recipient's next working day if sent by email with confirmation of receipt.
- 21.3. Either Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice in the manner set forth herein.

## 22. WAIVER

- 22.1. Any failure or delay by a Party in exercising any right under these GTC, the exercise or partial exercise of any right under these GTC, or any reaction or absence of reaction by a Party in the event of breach by the other Party of one or more provisions of these GTC, shall not operate or be construed as a waiver (either express or implied, in whole or in part) of its rights under these GTC or under the said provision(s) or preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver by one Party following a specific failure by the other Party, this waiver cannot be



invoked by the other Party in favor of either a new failure, similar to the prior one, or a failure of another nature.

### **23. ENTIRE AGREEMENT**

- 23.1. These GTC contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede and replace all prior agreements or understandings, whether written or oral, with respect to the same subject matter still in force between the Parties. Information on the Licensor's website that is expressly referred to in these GTC, however, are deemed to be part of these GTC.
- 23.2. The Parties shall use reasonable commercial efforts in order to come to an agreement regarding all matters not specifically covered in these GTC.

### **24. SEVERABILITY**

- 24.1. Whenever possible, the provisions of these GTC shall be interpreted so as to be valid and enforceable under the applicable law. However, if one or more provisions of these GTC is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and of these GTC shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision(s) had never existed. In such case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).

### **25. GOVERNING LAW AND JURISDICTION**

- 25.1. The validity, interpretation and enforcement of these GTC, matters arising out of or related to these GTC or their performance or breach, and related matters, shall be governed by the internal laws of the State of New York, without regard to the conflicts of law provisions thereof.
- 25.2. Each of the Parties agrees to negotiate in good faith with the other Party in order to resolve any disputes hereunder, and agree to attempt to resolve the dispute amicably, including escalating the dispute to the executive level of both Parties. To the extent not inconsistent with applicable law, all disputes concerning these GTC and/or the business activities contemplated or conducted hereunder that the Parties are unable to resolve between themselves shall be settled by mediation (with the consent of both Parties) or binding arbitration, in the English language, by a sole arbitrator under the auspices of American Arbitration Association in New York, NY. The costs of the arbitration shall be paid equally by the Parties. The decision of the arbitrator shall be binding on the Parties and may be entered in any court having jurisdiction to do so.

- 25.3. To the extent that the above binding arbitration provision is not enforceable for any reason, or if a Party brings an action to challenge the results of an arbitration proceeding, the Parties hereby agree that any action arising out of or connected in any way with these GTC will be brought in a State or Federal court of competent jurisdiction in the County and State of New York, and further irrevocably submit to the exclusive jurisdiction of any such court and waive any objection that such party may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court, and the parties further agree not to plead or claim the same.
- 25.4. Notwithstanding the foregoing, nothing in this Section 25 will limit the ability of either Party to seek an injunction or other equitable relief in any court having jurisdiction.

## ANNEX 1: SOFTWARE

The term Software refers to the computer program (both source code and object code) which is developed and owned by the Licensor

Twixl Publisher is a solution to create and publish mobile content applications. It is an all-in-one solution to create and enrich content, to present content in an app, to build the app and distribute it either in the app stores or internally within a company.

Twixl Publisher offers a plugin to enrich content in InDesign but also supports HTML-based as well as PDF content. It can easily be integrated with content management systems and different content sources.

Twixl Publisher is built out of the following components:

- Plugin
- Twixl Viewer Classic
- Builder
- Twixl App Reviewer

### Plugin

The plugin is on Adobe InDesign and enables content enrichment

### Twixl Viewer Classic

Twixl Viewer Classic is a Twixl media app that is available on the Apple App Store and on Google Play, with which the Licensee can visualize/test the layout of content created with Adobe InDesign, before publishing it in an app.

### Builder

Builder builds a single or multi issue application on iOS or Android for tablet, smartphone or both.

Builder also generates HTML versions of the content.

### Twixl App Reviewer

Twixl App Reviewer is a Twixl media app that is available on the Apple App Store and on Google Play, with which the Licensee can review its complete app, including the interface of the app and all types of content pages, including InDesign, HTML and PDF based.

### Web Reader

Starting from the tablet .publication format the Licensee can create a web edition out of its creation files. This Web Reader edition is a set of HTML files that are made available to the Licensee to publish on a webserver.

### .publication

.publication is the publication format of content created in InDesign and enriched with the Twixl Publisher plugin.

Additional and more technical information is available on our website on [HTTPS://HELP.TWIXLMEDIA.COM](https://help.twixlmedia.com)