

User Agreement

The following terms and conditions apply to the use of the e-learning web application ("the Web Application") offered by Atria Learning and Development GmbH ("Atria"), with its registered office in Leer and registration under VAT number DE 287 883 187. The Web Application enables Atria to design, manage and distribute courses via the Internet, which learners can follow via the Internet. For these purposes, Atria is using the technical backend provided by A New Spring BV, with its registered offices in Rotterdam and registered with the Chamber of Commerce under number 24308587 ("A New Spring").

The company that puts the Web Application to use ("the Company") does so under these terms and conditions. In the event of conflict, the provisions of the A New Spring Service Level Agreement and Data Processing Agreement (attached) will prevail over these terms and conditions.

Any deviations are only permitted if included in an Addendum or Proposal as supplied by Atria and signed by the Company, which mentions the deviation per article. Specific agreements as laid down in the Proposal and/or Addendum take precedence over both the Service Level Agreement and these conditions.

1. Access to the Web Application

1.1. Any use of the Web Application requires an account, which can be accessed by means of a username and password. To each account, one or more roles are assigned (such as administrator, instructor / trainer, designer, author or learner), each with specific rights, obligations and restrictions. Accounts are personal and may not be shared or transferred.

1.2. Atria can make an administrator account available to the Company. The Company can use this administrator account to create other accounts, for instance for course learners. For each account, the requested identification and contact details of the target user need to be provided. This information must be complete, correct and up to date at all times while the account exists. The Company may only grant access to accounts to individuals who are registered users.

1.3. All actions performed via an administrator or user account under the Company's management shall be deemed to occur under the Company's responsibility and supervision, also if the user in question does not work at the Company.

2. Learner licences for access to courses

2.1. Any person who wants to use the Web Application as a learner in a course must be registered as such. The Company may register individuals, but is in that case responsible for correct registration.

2.2. In addition, a used and activated licence is needed to make use of one or multiple courses. A licence can be valid for one or more courses.

2.3. A licence is used from the moment that a learner has the possibility to activate a course. Usage is every action that causes this possibility, such as linking a learner to a course or an entry by a learner.

2.4. Activation of a licence takes place when the first course is being obtained by the learner or is being activated by the administrator. The validity of the licence starts when the licence is being activated. Once the licence is created, the learner has 12 months to activate the licence.

2.5. Upon activation, a licence remains valid for 12 months. If a learner still has access to one or more courses after 12 months, a new licence will be activated every time for a period of 12 months. If the Company does not wish this automatic prolongation, it can avoid it by aligning the validity of a course with the duration of the licence, or by deactivating automatic prolongations in the Web Application.

2.6. Upon use, licences are linked to learners and are not transferable, changeable, or adaptable.

2.7. In order to give the Company the possibility to distribute free demos, the Web Application has a demo course type available, with a very limited set of functionalities and certain settings. For this type of courses there are defined licences available which will not be charged or deducted from the stock.

3. Using licences

3.1. To facilitate course access while the learner is not yet established, the Company can make use of access codes. An access code can be used by a learner to gain access through his/her account to one or more courses.

3.2. Unused access codes that have not yet been linked to a learner can be deleted. When the licence that belongs to this access code has not been used yet, the registered licence will remain available for the Company to be used by a learner.

4. Prices and payment

4.1. An annual platform fee is charged for the use of the Web application. The annual platform fee is invoiced per agreed payment schedule.

4.2. In addition, for the use of the courses in the Web Application, an activated licence is required per learner, per year, as described in article 2.

4.3. Atria reserves the right to change prices and rates when circumstances warrant this. This will be announced at least two months in advance. Subsequent price changes will not affect the value of licences that have already been purchased.

4.5. Licences not (yet) in use have a validity of 2 years during the term of the agreement. This means that, from the moment of purchase, the Company has got a time period of 2 years to use the licence (see 2.3 on licence usage). The participant then has 12 months to activate the licence (in accordance with 2.4 on activation). After activation, the licence gives the participant 12 months access to one or more courses (in accordance with 2.5 on access).

4.6. Prices in euros are valid when the Company is located in the European Economic Area. In all other cases, the prices as given by Atria in US dollars or other currency apply. All prices are excluding turnover tax.

5. Conditions of use

5.1. The Company may use the Web Application and its associated functionalities at its own discretion and allow users to exercise their roles through their accounts, within the limits set by Atria. The main focus of using the Web Application must, however, be on creating, distributing and managing courses or additions to courses via the Internet.

5.2. Users may not undertake activities that disrupt or interrupt the Web Application or the underlying hardware and software. Unless specified otherwise in the Addendum, Atria is entitled to set limits on the use of the Web Application (both via the browser and via the API) when this use leads to unannounced and extremely large-scale use or places a disproportionate burden on the Web Application or the underlying hardware or software. Any use of the free demo features that exceeds demonstrating, evaluating and testing will always be regarded as disproportionate.

5.3. If a violation of the provisions in the previous paragraph takes place, Atria will ask the Company to take appropriate action. If the Company fails to take appropriate action within a reasonable period of time or fails to respond to the request, Atria may itself take measures such as removing stored data, suppressing data traffic or limiting or blocking access to the Web Application.

5.4. Atria has the right to block or close user accounts if it suspects unauthorised use or use that violates this agreement. Atria will give prior notice of its intention to block or close an account and will allow the Company the opportunity to resolve the problem, unless Atria cannot be required to await such action.

5.5. Atria reserves the right to take measures, such as removing or disabling access to Client Content, if this Client Content is, in the opinion of Atria, contrary to German law or the law of the country where Company is established. If Atria is in such a situation obliged to do so under German law, it may subsequently make personal data, belonging to the Company or users in question, available to government agencies or injured third parties. Atria will inform the Company about the foregoing in advance, unless Atria cannot be required to do so in view of the urgency of the matter or on the grounds of a statutory prohibition.

6. Availability of the Web Application

6.1. Atria will endeavour to ensure the uninterrupted availability of and a rapid response time from the Web Application, and to ensure access to Client Content.

6.2. Unless the damage is due to a violation of the Service Level Agreement, Atria is not liable for any damage suffered by the Company in relation to the non-availability, poor response time, or loss or unavailability of Client Content.

6.3. The Web application contains links and integrations with online services of independent third parties, such as Google Documents, Office Viewer, Youtube for videos and Slideshare for presentations. Atria does not have any influence on the manner of services provided by such third parties, and gives no guarantees regarding their quality, availability or response time, but will endeavour to keep the links and integrations functioning.

6.4. Atria is constantly innovating the Web Application and related services. The form and nature of our services can therefore change. This is inherent to Software as a Service. Where any changes made are substantial, Atria will inform the Company in time and consider the Company's feedback. The decision to implement a change, however, remains entirely up to Atria.

7. Intellectual property and confidentiality

7.1. All rights to courses and other content that is posted by the Company or its users in the Web Application ("Client Content") are vested in the Company or its suppliers/licensors. The Company grants Atria a limited licence to use the Client Content in so far as necessary to provide the service to the Company and its learners. Atria is not entitled to use Client Content for any other purpose or any other party without explicit permission.

7.2. It is possible to export all Client Content from the library of the Web Application during the term of the agreement. This Client Content can be exported as XML and HTML. Also, user data and results can also be exported in CSV.

7.3. Except for Client Content, the rights to the Web Application and all content made available via the Web Application ("ATRIA Content") are vested in Atria and its suppliers. Atria grants the Company a limited licence to use the Atria Content for the purpose of using and managing the Web Application.

7.4. Atria guarantees that the Web Application and the Atria Content breach no rights of any third party. Atria indemnifies the Company against all claims made by third parties in this respect.

7.5. The Company guarantees that the Client Content breaches no rights of any third party. This includes using URLs with brand names that are not owned by Company. The Company indemnifies Atria against all claims made by third parties in this respect.

7.6. The Company will not use knowledge acquired about the operation of the Atria platform to create, set up or offer a comparable (learning) platform.

7.7. Atria will not inspect information that is transmitted from or stored on the Web Application, unless the information in question is in the public domain, the inspection of the information in question has been explicitly agreed, the inspection of the information in question is inevitable or necessary for improving the functioning of the Web Application or if Atria is required to inspect the information in question by an authorised order. In such cases, Atria will endeavour to limit inspection to a minimum and will exercise confidentiality with regard to what has been inspected.

8. Processing of personal data

8.1. Personal data of users is processed via the Web Application. By entering or providing personal data, the Company guarantees that it has permission or any other legal basis for processing it through the Web Application and indemnifies Atria for all consequences of a breach of this warranty.

8.2. Atria acts as a processor within the meaning of the General Data Protection Regulation (GDPR). Parties therefore agree to the Data Processor Agreement of Atria, provided alongside this Agreement.

9. Liability

9.1. Atria is exclusively liable for direct damage or loss arising from attributable failure to comply with the agreement. Direct damage or loss is limited to (a) the value of the licences or access codes that could not be used or used in full due to the failure, (b) damage or loss sustained by parties involved in relation to personal data breaches (as meant in article 4(12) GDPR), (c) the reasonable costs incurred in determining the cause and the extent of the damage or loss, (d) the reasonable costs incurred by the Company in compensating for losses sustained by learners due to the failure and (e) reasonable costs incurred to prevent or limit further damage or loss.

9.2. There will explicitly be no compensation for the costs of recovering or recreating data, lost turnover or lost profit. We recommend that you always create your own backup of the Client Content.

9.3. Also, no liability exists when the cause is traced back to a non-functioning or non correct functioning of the online services of independent third parties as referred to in 6.3.

9.4. The maximum amount that will be paid in the event of liability, if the cause is covered by Atria's professional liability insurance, is the amount that the insurer pays in this regard, plus Atria's deductible, if applicable. Atria will send Company a copy of the relevant insurance policy upon request.

9.5 If the cause is not insured or the insurer refuses to pay compensation for any reason whatsoever, the maximum amount per claim will be the sum of the licences purchased and the paid platform fee, in the twelve months prior to the time at which the damage or loss occurred.

10. Term of the agreement

10.1. This agreement is entered into from the moment this User Agreement has been concluded and will remain effective for an indefinite period after a possible agreed trial period. The agreement ends when:

- Before the end of the trial period, the Company does not confirm to Atria that the Agreement should be continued; or
- The Company terminates the agreement in writing after the start of the indefinite time period, whereby the agreement continues until the last already activated license has expired;
- Atria, after entering the indefinite time period, terminates the agreement in writing with due observance of a notice period of 12 months, whereby the agreement will continue after this period until the last licence has expired, however the Company cannot purchase any more licences or issue any new licences from the date of termination (twelve months after written notice of termination).

10.2. Both the Company and Atria may terminate this agreement immediately and without notice or judicial intervention being necessary, in whole or in part, for the future if:

- the counter party applies for or is granted a moratorium;
- the counter party files for bankruptcy or is declared bankrupt;
- the counter party, also following a reasonable period after written notice, fails to comply with its obligations under this agreement;
- the counter party fails to meet its obligations for a period of more than fourteen days due to force majeure (not including an inability to fulfil payment obligations).

10.3. Upon termination of this agreement, regardless of the reason, Atria is entitled to delete or make inaccessible all Client Content and to close all accounts. In this case Atria is not obliged to provide the Company with a copy of Client Content, however it will keep the option referred to in Article 7.2 available up to and including the last day of the term of the agreement.

10.4. Purchased but unused licences as well as partially spent licences will not be refunded.

10.5. The agreement ends on the date on which the last license expires, as determined in article 10.1. The annual platform fee is payable up to and including the contract year within which the end date of the user agreement falls. No settlement takes place.

11. Adjustments in the Agreement

11.1. Atria may adjust this user agreement at any time, provided it notifies the Company of the adjustments in writing at least two months ahead of the planned date of the coming into force of the adjustments.

11.2. If the Company does not wish to accept an adjustment, Company must terminate the agreement before the end of this period. In that case the service will be provided until the last licence expires, however still under the old user agreement. The purchase of new licences after this period will be seen as acceptance of the adjustments.

12. Other provisions

12.1. This Agreement is governed by German law.

12.2. Any disputes that cannot be settled amicably will be submitted to the competent German legal system.

12.3. Obligations which, in view of their nature, are intended to continue even after the end of the agreement shall continue after the end of this agreement.

12.4. If any provision in the Agreement is declared null and void, this will not affect the validity of the entire agreement. For the purpose of replacing such a provision, parties will lay down (a) new provision(s) that reflect(s) as much as possible the original agreement under the law.

12.5. The version of any communication, records and measurements received or stored by Atria, for example of the availability of the Webapplication, will serve as conclusive evidence, unless the Company is able to furnish evidence to the contrary.

12.6. The term "written" in these terms and conditions also includes communication by e-mail, provided that the identity and integrity of the e-mail have been sufficiently established.

12.7. The company may transfer its rights and obligations under this agreement to a third party only with the prior written consent of Atria, except in the event of the transfer of the entire enterprise or the specific part thereof.

12.8. Atria may transfer relevant rights and obligations to a third party that takes over the relevant services without requiring consent.

12.9. Parties are mutually entitled to mention the counter party as a reference, using trade names and word marks and logos in consultation with and at the direction of the counter party. In this context, parties may not give a misrepresentation of affairs.