



# User Agreement

## aNewSpring Web Application

User Agreement (UA) aNewSpring ENGv10

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# User Agreement

The following terms and conditions apply to the use of the e-learning web application ("the Web Application") offered 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 Web Application enables training centres and training companies to design, manage and distribute courses via the Internet, which learners can follow via the Internet.

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 Service Level Agreement will prevail over these terms and conditions. Any deviations are only permitted if included in an Addendum or Proposal as supplied by aNewSpring 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 user name 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. A New Spring will 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. Individuals can register themselves via the Web Application. 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 taken into use, 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. The Company can issue access codes via the Web Application and make these codes available to learners (for a fee, or free of charge). Learners can start to use and activate an access code according to the previous article, within 12 months of the issue date.
- 3.3. 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. For the use of the courses in the Web Application, an activated licence is required per learner, per year, as described above. Use by all other types of users is free. The monthly service fee is invoiced per 12 months. See the Proposal for more information about what is included in the service costs.
- 4.2. Licences can be purchased by request or via the payment interface that A New Spring offers through the Web Application and/or website. The prices stated at the time of purchase will apply. A New Spring 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.

- 4.3. 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).
- 4.4. Invoices that are not settled via the payment interface must be settled within 14 days, unless stated otherwise on that specific invoice.
- 4.5. Prices in euros are valid when the Company is located in the European Economic Area. In all other cases, the prices as given by A New Spring 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 A New Spring. 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, A New Spring is entitled to set limits on the use of the Web Application 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, A New Spring 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, A New Spring may itself take measures such as removing stored data, suppressing data traffic or limiting or blocking access to the Web Application.
- 5.4. A New Spring has the right to block or close user accounts if it suspects unauthorised use or use that violates this agreement. A New Spring 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 A New Spring cannot be required to await such action.
- 5.5. A New Spring reserves the right to take measures, such as removing or disabling access to Client Content, if this Client Content is, in the opinion of A New Spring, contrary to Dutch law or the law of the country where Company is established. If A New Spring is in such a situation obliged to do so under Dutch law, it may subsequently make personal data, belonging to the Company or users in question, available to government agencies or

injured third parties. A New Spring will inform the Company about the foregoing in advance, unless A New Spring 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. A New Spring will endeavour to ensure the uninterrupted availability of and a rapid response time from the Web Application, and to ensure access to Client Content, all in accordance with the Service Level Agreement that accompanies this User Agreement.
- 6.2. Unless the loss or damage is due to a violation of the Service Level Agreement, A New Spring is not liable for any loss or 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. A New Spring 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. A New Spring 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 A New Spring is required to inspect the information in question by an authorised order. In such cases, A New Spring will endeavour to limit inspection to a minimum and will exercise confidentiality with regard to what has been inspected.
- 6.5. A New Spring 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, A New Spring will inform the Company in time and consider the Company's feedback. The decision to implement a change, however, remains entirely up to A New Spring.
- 6.6. A New Spring will make it possible to export Client Content from the Web Application during the term of the agreement.

## **7. Intellectual property**

- 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 A New Spring a limited licence to use the Client Content in so far as technically necessary to provide the service to the Company and its learners. A New Spring is not entitled to use Client Content for any other purpose or any other party.

- 7.2. Except for Client Content, the rights to the Web Application and all content made available via the Web Application ("ANS Content") are vested in A New Spring and its suppliers. A New Spring grants the Company a limited licence to use the ANS Content for the purpose of using and managing the Web Application.
- 7.3. A New Spring guarantees that the Web Application and the ANS Content breach no rights of any third party. A New Spring indemnifies the Company against all claims made by third parties in this respect.
- 7.4. The Company guarantees that the Client Content breaches no rights of any third party. The Company indemnifies A New Spring against all claims made by third parties in this respect.

## **8. Processing of personal data**

- 8.1. Personal data of users is processed via the Web Application. By entering personal data, the Company guarantees that it has permission or a legal basis for processing it through the Web Application and indemnifies A New Spring against all claims made by parties concerned in this respect.
- 8.2. A New Spring acts as a processor within the meaning of the General Data Protection Regulation (GDPR). Parties therefore agree to the Data Processor Agreement of A New Spring, provided alongside this Agreement.

## **9. Liability**

- 9.1. A New Spring 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.
- 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 A New Spring's professional liability insurance, is the amount that the insurer pays in this regard, plus A New Spring's deductible, if applicable. A New Spring 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 (other than wilful misconduct or gross negligence on the part of A New Spring), the maximum amount per claim will be the sum of the licences purchased 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 A New Spring 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;
  - A New Spring, 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 A New Spring 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, A New Spring is entitled to delete or make inaccessible all Client Content and to close all accounts. In this case A New Spring is not obliged to provide the Company with a copy of Client Content, however it will keep the option referred to in Article 6.6 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, unless the agreement is terminated due to an attributable failure on the part of A New Spring.

## 11. Adjustments in the Agreement

- 11.1. A New Spring 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 Dutch law.
- 12.2. Any disputes that cannot be settled amicably will be submitted to the competent Dutch court in the district of Rotterdam, the Netherlands.
- 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 A New Spring 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 A New Spring, except in the event of the transfer of the entire enterprise or the specific part thereof.
- 12.8. A New Spring, however, 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.

## 13. Resale of the Web Application

- 13.1. The Company may authorise third parties to use accounts with the purpose of reselling the Web Application.



- 13.2. These third parties are clients of the Company and not of A New Spring. These third parties must therefore be bound by the Company to contractual conditions that are substantially similar to these terms and conditions, however on the clear understanding that the Company is the party that is liable for shortcomings vis-a-vis these third parties, also if these shortcomings are attributable to A New Spring.
- 13.3. The Company must collect the sums due from its clients in respect of licences. A New Spring will always collect the amounts owed for licences directly from the Company, regardless of whether the Company's clients have already paid the amounts due to the Company.
- 13.4. The Company indemnifies A New Spring against all claims by its clients relating to this agreement. The Company may then recover such claims from A New Spring subject to the provisions of Article 9 (Liability).
- 13.5. In the context of reselling, the Company is authorised to use A New Spring's trade name, brand names and logos in order to identify the Web Application and its supplier, however it is not permitted to represent itself as A New Spring or as a representative of A New Spring.
- 13.6. A New Spring will not approach these third parties directly except with the Company's permission or if urgent reasons make it necessary to do so. If the Company terminates the agreement, A New Spring will become entitled to approach these third parties directly.