

AgilityHealth University

Terms and Conditions Agreement



By using any of the videos or courses from the AgilityHealth University Online Education Platform (the “University”, as defined below) made available via <https://learn.agilityhealthradar.com> (the “Website”), you agree to the following terms and conditions of this AgilityHealth University Terms and Conditions Agreement (“**Agreement**”). If you do not agree, you are not to copy, install, or otherwise use the Courses and you are not to log into, use, or otherwise access the Website.

The “**Effective Date**” of this Agreement is the date of (a) your initial access to or use of the Courses or (b) the effective date of the first order referencing this Agreement, whichever is earlier. All Courses, Videos, and the Website are owned and licensed by AgilityHealth. This Agreement grants a limited, non-exclusive license to registered users of the Website (“**Registered User**”) to use the Courses made available via the Website.

In consideration of the mutual promises and benefits set forth herein, you, as a Registered User, agree as follows:

1. Designation of Videos and Courses Being Accessed.

- A. The terms set forth herein govern Registered User’s use and access to the AgilityHealth University Online Education Platform. The AgilityHealth University Online Education Platform shall be referred to hereinafter as the “Courseware”.
- B. AgilityHealth will provide the Courseware in accordance with the terms of this Agreement, including any exhibits attached hereto.
- C. Payment Terms:
 - (i) **For all business-to-business (B2B) transactions:** Invoices are due within thirty (30) days of receipt. Overdue moneys accumulate interest at the rate of 1% per month. If paying by credit card a 2.5% processing fee will be added to your invoice.
 - (ii) **For all Non-B2B transactions:** Registered User is responsible for all applicable taxes, and AgilityHealth will charge tax when required to do so. Registered User’s payments are non-refundable unless required by law (e.g., Registered Users living in the European Union have the right to cancel their paid subscription within fourteen (14) days of signing up for the Courseware). At the time of each purchase, Registered User will provide AgilityHealth with a valid credit card or completed electronic funds transfer (“**EFT**”) form for payment and Registered User hereby authorizes AgilityHealth to charge any and all subscription fees to such card or EFT transfer.

AgilityHealth may change the fees in effect but will give Registered User advance notice of these changes via a message to the email address associated with Registered User’s account.

2. Grant of Rights to Access and Conditions of Use.

- A. AgilityHealth University Online Education Platform:

Each individual user who wishes to access the Course Library should be a valid Registered User to use the online library. No sharing of credentials is permitted as this violates the terms of use of this Agreement. Users may be purchased individually or in in group packages.

- B. AgilityHealth hereby grants to Registered User a limited, revocable, nonexclusive, nontransferable,

AgilityHealth University

Terms and Conditions Agreement



non-sublicensable right and license to access, use, execute and display the Courseware on its internal computer screens. Where applicable, potential or actual agents and contractors for Registered User may also access and use the Courseware provided they do so solely for Registered User's benefit and Internal Business Purposes. "**Internal Business Purposes**" means access and use to improve organization and performance of Registered User's product and/or process development for generating Registered User sales and maximizing associated revenues.

- C. AgilityHealth shall not be liable or held to be in default of performance or operational obligations due to any technical or design problem within the Registered User's electronic network that compromises its employees' access to the public Internet.
- D. Registered User must take appropriate measures to adequately protect AgilityHealth's proprietary materials to prevent unauthorized parties to have access to AgilityHealth's proprietary materials. Registered User shall not transfer or sublicense the Courseware to any third party, in whole or in part, in any form, whether modified or unmodified.
- E. This Agreement does not create a partnership or joint venture between the parties, and does not make either party the employee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party.
- F. For compliance with the EU General Data Protection Regulation (the "GDPR"), the parties shall comply with the provisions of **Addendum A** as attached to this Agreement. In addition, AgilityHealth is SOC2 certified for both privacy and security and carries a Privacy Shield certification in the EU.

3. **Ownership of Courseware and Intellectual Property Being Accessed.**

- A. Registered User recognizes that AgilityHealth regards the Courseware as its proprietary information and as confidential trade secrets of significant value. Registered User agrees not to provide or to otherwise make available in any form the Courseware, or any portion thereof, to any person other than the Registered User without the prior written consent of AgilityHealth.
- B. Registered User further agrees to treat the Courseware with at least the same degree of care with which Registered User treats its own Confidential Information, and in no event with less care than is reasonably required to protect the confidentiality of the Courseware. Registered User shall at all times exercise all due and diligent precautions to protect the integrity of AgilityHealth's proprietary and Confidential Information.
- C. Registered User shall promptly notify AgilityHealth in writing of any unauthorized use, infringement, misappropriation, dilution or other violation of AgilityHealth's proprietary materials provided to Registered User of which it becomes aware.
- D. Registered User acknowledges and understands that in the event of any breach of this Section of the Agreement, AgilityHealth shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section of the Agreement, but shall be in addition to all other remedies available to AgilityHealth at law or in equity. If AgilityHealth brings an action to enforce any provision of this Agreement, AgilityHealth, if the prevailing party, shall be entitled to reasonable attorneys' fees and court costs.
- E. ANY WARRANTIES ARISING IN THE COURSE OF DEALING, USAGE OR TRADE

AgilityHealth University
Terms and Conditions Agreement



PRACTICE ARE EXCLUDED AND EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THIS AGREEMENT, AGILITYHEALTH DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. REGISTERED USER IS RESPONSIBLE FOR REGISTERED USER'S SELECTION AND USE OF THE COURSEWARE AND SERVICES PROVIDED BY AGILITYHEALTH.

4. Exclusions.

Except as expressly authorized herein, Registered User shall not: (i) copy the Courseware or any content contained therein, in whole or in part – this specifically prohibits Registered User from copying the Courseware, including any text of content contained therein – into any other system, format, media or software product, without AgilityHealth's prior written consent; (ii) reverse compile, reverse assemble, or access with intent to "hack" all or any portion of the Courseware; (iii) distribute, market, rent, lease, sublicense, provide access to, or transfer the Courseware to third parties; (iv) modify the Courseware or (v) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Courseware. No license, right, or interest in any of AgilityHealth's trademarks, trade names, or service marks is granted hereunder. The provisions set forth in this Section 4 shall survive termination or expiration of this Agreement.

5. Limitation of Remedy.

If the Courseware are found to be defective, AgilityHealth's obligation is expressly limited to the repair or replacement of such defective Courses, or to a refund of an equitable portion of related fees, up to and including a full refund of the access fee for the Courseware, at AgilityHealth's discretion.

IT IS UNDERSTOOD AND AGREED THAT AGILITYHEALTH'S LIABILITY, WHETHER IN CONTRACT OR TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF THE COURSE FEES. FURTHER, IN NO EVENT SHALL AGILE TRANSFORMATION, INC. BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST DATA OR LOST PROFITS.

6. Confidential Information.

"**Confidential Information**" means any non-public information of the parties hereto relating to its business activities, operations, financial affairs, technology, marketing or sales plans that is disclosed to, and received by, the other party pursuant to this Agreement. Confidential Information includes, but is not limited to, the terms and pricing of this Agreement and AgilityHealth's Videos, Courses and software. Neither party will, without the prior written consent of the other party, use or disclose the Confidential Information of the other party during the Term of this Agreement and for three (3) years following its expiration or termination, or, in the case of a party's trade secrets, a party's confidentiality obligations will continue for as long as the applicable information is deemed a trade secret or otherwise protected under applicable law. Notwithstanding the foregoing, AgilityHealth may disclose Confidential Information to subcontractors on a need-to-know basis who have agreed to be bound by non-disclosure provisions at least as stringent as those contained in this Agreement. Confidential Information will not include information which: (i) is or becomes public knowledge through no breach of the Agreement by the receiving party, (ii) is received by recipient from a third party not under a duty of confidence, or (iii) is already known or is independently developed by the receiving party without use of the Confidential Information.

In addition to the Confidential Information provisions set forth in this Agreement, the following shall apply

AgilityHealth University

Terms and Conditions Agreement



to the Courseware: The Courseware include Confidential Information which is AgilityHealth's trade secrets. Registered User shall utilize its best efforts to prevent disclosure of such information, at least to the extent that it protects its own Confidential Information.

7. Termination.

AgilityHealth may terminate this Agreement if Registered User is in default of any of the terms and conditions of this Agreement and fails to correct such default within thirty (30) days after written notice thereof from AgilityHealth, and without refund of any amount paid to AgilityHealth or release of any amounts due AgilityHealth at the time of termination.

Registered User's account will remain in effect until it is cancelled or terminated under this Agreement. If Registered User fails to pay for its account and access to the Courseware on time, AgilityHealth reserves the right to suspend Registered User's account.

Without limiting its rights to modify, upgrade or provide new releases of the Videos, AgilityHealth may decide to discontinue the Courseware, as a whole, in response to unforeseen circumstances beyond AgilityHealth's control or to comply with a legal requirement. If AgilityHealth does so, AgilityHealth will provide Registered User reasonable prior notice. If AgilityHealth discontinues the Courseware in this way before the end of any fixed or minimum term paid for by Registered User, AgilityHealth will refund the portion of the fees Registered User pre-paid but has not received for the remainder of such term.

8. Notices.

All notices in connection with this Agreement shall be in writing. AgilityHealth will provide notice via email or through Registered User's account. Registered User agrees that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. AgilityHealth's notices will be deemed given upon the first business day after it is sent. Notices to AgilityHealth will be by post to Agile Transformation, Inc. d/b/a Agility Health, 11919 Grant Street, Suite #200, Omaha, NE 68164, Attn: Customer Success Manager. Any notices to AgilityHealth will be deemed given upon AgilityHealth's receipt thereof.

9. Successors.

This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.

10. Severability.

In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.

11. Governing Law/Venue.

This Agreement shall be governed and interpreted by the laws of the State of Nebraska, USA. The appropriate venue and jurisdiction for the resolution of any disputes hereunder will be in Douglas County, Nebraska.

12. Assignment.

Neither party may assign this Agreement, or any of its rights under this Agreement, without the other party's prior written consent; notwithstanding the foregoing, AgilityHealth may assign this Agreement, upon written notice but without consent, to a successor-in-interest to substantially all of the business or in

AgilityHealth University
Terms and Conditions Agreement



the event of internal business restructuring of AgilityHealth. Any assignment attempted in violation of this Agreement will be null and void.

13. Entire Agreement.

This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and merges and supersedes all prior agreements, discussions and understandings, express or implied, concerning such matters.

Agile Transformation, Inc. d/b/a AgilityHealth (“**AgilityHealth**”) reserves the right, at its discretion, to update or revise this Agreement. The amended version will be effective at the time AgilityHealth posts or presents it. AgilityHealth may provide you with notice of substantial changes to the Agreement when you log into (or try to log into) the Website. Your continued use of the Website, and/or Courses following the posting of any changes to this Agreement constitutes your acceptance of those changes. No revision or update will apply to a dispute of which AgilityHealth had actual notice on the date AgilityHealth posts or presents the amended version.

AgilityHealth University

Terms and Conditions Agreement



Addendum B | Data Privacy and Security Addendum

This Data Privacy and Security Addendum (“Addendum”) is made a part of the attached Agreement. In the event of a conflict or inconsistency between the terms and conditions of the Agreement and this Addendum, the terms and conditions of this Addendum shall prevail except as otherwise specifically set forth in this Addendum. Capitalized terms used and not defined in this Addendum shall have the meanings given in the Agreement.

To the extent AgilityHealth processes personal data of individuals within the European Union, European Economic Area and Switzerland (“EU”) in connection with its performance of the Agreement, “DP Law” shall be deemed to include: (i) EU Regulation 2016/679 (“GDPR”), (ii) the Swiss Data Protection Act (“DPA”), and any equivalent, replacement or similar legislation implemented in the United Kingdom after that date, whether in light of the United Kingdom’s withdrawal from the European Union or otherwise.

1. **Definitions.** For purposes of this Addendum, the following terms have the meanings prescribed in this Section, irrespective of capitalization.
 - A. **Data Subject** means a natural person that can be identified by any Personal Data.
 - B. **Registered User Data** means any Personal Data or Pseudonymized Data.
 - C. **Personal Data** means any information that (i) AgilityHealth possesses or is able to access arising out of its performance under the Agreement; and (ii) can be used to directly or indirectly identify a natural person.
 - D. **Processing** means any operation or set of operations that (i) arises out of AgilityHealth’s performance under this Agreement; and (ii) is performed upon Personal Data.
 - E. **Pseudonymized Data** means Personal Data which has been transformed into a form which is not attributable to a specific Data Subject without the use of additional information.
 - F. **Restricted Transfer** means one of the following transfers, but only where such transfer would be prohibited by DP Law (or by the terms of data transfer agreements put in place to address the data transfer restrictions of DP Law) in the absence of the Standard Contractual Clauses to be established under Section 9 below:
 - (i) a transfer of personal data from Registered User to AgilityHealth; or
 - (ii) an onward transfer of personal data from AgilityHealth to a processor on behalf of Registered User.
 - G. **Standard Contractual Clauses** means the Clauses in Addendum B, as they may be amended from time to time in accordance with Section 12.
2. **Processing.** Irrespective of AgilityHealth’s role as a “controller,” AgilityHealth shall process Registered User data only for the benefit of Registered User, and not for its own or a third party’s benefit. Notwithstanding the foregoing, AgilityHealth may use pseudonymized data for its own benefit as permitted under the Agreement. AgilityHealth shall keep any additional information which could be combined with any pseudonymized data to identify a data subject separate from all pseudonymized data, and implement technical and organizational measures designed to prevent such identification.
3. **Administration.** AgilityHealth shall implement and maintain appropriate technical and organizational

AgilityHealth University

Terms and Conditions Agreement



measures (e.g., encryption of personal data, access control, logs, audits, instructions, trainings, ability to restore the availability and access to personal data in a timely manner, etc.) designed to reasonably safeguard all personal data against unintentional or illegal destruction or unintentional loss, modification, unauthorized disclosure, or unauthorized access in view of the risks associated with the processing and type of the data to be protected. At a minimum, these technical and organizational measures shall comply with the requirements set forth in Art. 32 GDPR and any applicable DP Law.

4. **Contractors.** AgilityHealth shall ensure that only authorized persons have access to, and otherwise process, Registered User Data, and that such persons have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and shall comply with the provisions of this Addendum as applicable to them. This shall also apply to any affiliate, subcontractor, supplier and other party on the part of AgilityHealth that are given access to or otherwise process personal data by or for AgilityHealth. Upon request, AgilityHealth shall disclose the names, address, contact details and function of any such parties. To the extent that such parties are processors for AgilityHealth under GDPR with respect to personal data under DP Law, they shall be bound pursuant to Art. 28 GDPR or the equivalent provision of applicable DP Law. AgilityHealth shall be responsible for such parties and any other persons on its part with access to Registered User Data as it is for itself under this Agreement or any DP Law. Any personal data shall be considered Confidential Information of Registered User under this Agreement.
5. **Registered User Disclosure; AgilityHealth Return.** Registered User shall ensure that it is permitted under DP Law to disclose Registered User Data to AgilityHealth as per this Addendum, and that data subjects have been informed as to the processing of their personal data by Registered User in compliance with DP Law. AgilityHealth shall at any time upon request return to Registered User any personal data processed by it, with or without (as per Registered User's request) keeping a copy of it except as required by applicable law. Registered User shall supply all personal data to AgilityHealth in a format compatible with Art. 20 GDPR.
6. **Data Subject Requests.** The responsibility for, and the control over, handling data subject requests in connection with Registered User Data shall be with Registered User, unless a data subject request expressly indicates that it is to be handled by AgilityHealth and not by Registered User. AgilityHealth shall without delay forward to Registered User any such request. AgilityHealth shall assist Registered User with Registered User's technical and organizational measures required to fulfill such requests insofar as AgilityHealth is required to do so under DP Law, taking into account the nature of AgilityHealth's processing and of the Registered User data.
7. **Infringement of GDPR.** Each party shall inform the other party immediately if it has reason to believe that the processing of Registered User Data under or in connection with this Agreement infringes any DP Law or this Addendum or if it has reason to believe that it can no longer comply with this Addendum, including any request by a supervisory authority concerning Registered User Data or the processing of such Registered User Data (except where applicable law prohibits such information), if such information could be of relevance for the other party in its capacity as a data controller; the parties shall cooperate in responding to requests of supervisory authorities. AgilityHealth shall not make any filing, notification or other registration with a public authority or other party that contains personal data or otherwise discloses the identity of Registered User without the express written approval of Registered User, unless prohibited by applicable law, in which case AgilityHealth shall inform Registered User as soon thereafter as is reasonably possible.
8. **Notice.** AgilityHealth shall notify Registered User without undue delay after becoming aware of any actual security breach pertaining to personal data as required by DP Law and provide the information, as per Article 33 para. 3 GDPR and corresponding provisions of other applicable DP Law, available to AgilityHealth regarding: (a) the nature of the personal data breach, including, if possible, the categories and the approximate number of affected data subjects and the categories and the approximate number

AgilityHealth University

Terms and Conditions Agreement



of affected personal data records; (b) probable consequences of a personal data breach; and (c) measures which have been taken or are proposed to manage the personal data breach, including, if applicable, measures to limit its possible damage. This shall apply even if AgilityHealth concludes that Registered User itself has no data breach notification obligation in the specific case. The reporting of a data breach to the authorities shall be undertaken by each party on its own, with prior consultation of the other party and subject to the foregoing paragraph; any notifications to the data subjects shall be done through, and by, Registered User.

9. **Access; Transfer.** AgilityHealth shall not permit any access to personal data from outside the European Economic Area, except with the written approval of Registered User or where such access occurs by Registered User or parties acting on behalf of Registered User. In light of the foregoing, the parties acknowledge and agree approval shall be granted for having Registered User data stored by Microsoft in its European Azure Cloud. To the extent that the transfer of personal data out of the European Union is required, the parties agree that such transfer shall be made in compliance with this Section 9.
 - A. Subject to the other subsections of this Section 9, Registered User (as “data exporter”) and AgilityHealth (as “data importer”) hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from that Registered User to AgilityHealth.
 - B. The Standard Contractual Clauses shall come into effect under Section A only after all three of the following events have occurred:
 - (i) the data exporter becomes a party to them;
 - (ii) the data importer becomes a party to them; and
 - (iii) the relevant Restricted Transfer commences.
 - C. Section A shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from data subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable DP Law.
 - D. If either party determines in its reasonable discretion that Restricted Transfers will no longer be required under this Agreement after the Standard Contractual Clauses have come into effect under Section 9.B., that party may deliver notice of its determination to the other party.
 - (i) If the other party consents or does not respond to the notice of such determination within thirty (30) days after such notice was delivered, the Standard Contractual Clauses shall be deemed inactive under this Agreement.
 - (ii) If the other party objects to the first party’s determination, then the Standard Contractual Clauses shall remain in effect.
 - E. If the Standard Contractual Clauses are inactive pursuant to Section 9.D.(i), they may be revived at a later date by any of the triggering events under Section 9.B.
 - F. Any notice or objection made pursuant to Section 9.D. shall not affect either party’s rights under Section 12.
10. **Audit.** AgilityHealth shall make available to Registered User all information and access necessary to demonstrate and verify AgilityHealth’s compliance with this Addendum and DP Law in processing Registered User personal data and allow for and contribute to audits, including inspections, conducted by the Registered User or another auditor mandated by Registered User to achieve the foregoing.
11. **Costs.** Each party shall bear its own costs for implementing this Addendum, and compliance with DP

AgilityHealth University
Terms and Conditions Agreement



Law, except that each party shall indemnify and hold the other party harmless against any liability, claims, losses, costs and expenses arising from the indemnifying party's violations of this Addendum or any DP Law.

12. Changes in DP Law.

A. Either party may:

- (i) by at least thirty (30) days' written notice to the other party, from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under Section 9), as they apply to Restricted Transfers which are subject to a particular DP Law, if such changes are required as a result of any change in or decision of a competent authority under the applicable DP Law, in order to allow those Restricted Transfers to be made (or continue to be made) without breach of that DP Law; and
- (ii) propose any other variations to this Addendum which either party reasonably considers to be necessary to address the requirements of any DP Law.

B. If either party gives notice under Section 12.A.(i) or proposes other variations under Section 12.A.(ii), the other party shall not unreasonably withhold or delay its agreement to any variations to this Addendum reasonably designed to mitigate the risks identified in such notice.

C. If either party gives notice under Section 12.A.(ii), the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in such party's notice as soon as is reasonably practicable.

13. Severability. Should any provision of this Addendum be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either:

- A. amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible;
- B. construed in a manner as if the invalid or unenforceable part had never been contained therein.