



# Courseware Subscription Terms

## 1. Agreement.

These Courseware Subscription Terms ("Agreement") are incorporated into the order form ("Order Form Form") executed by Customer and HealthcareSource HR, Inc., a symlr company ("symlr").

CUSTOMER AGREES THAT THE AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY CUSTOMER. BY EXECUTING THE ORDER FORM, OR BY USING COURSEWARE, CUSTOMER AGREES TO BE BOUND BY THE AGREEMENT AND ACCEPTS ALL OF THE PROVISIONS OF THESE TERMS. THE AGREEMENT IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT USES COURSEWARE ON BEHALF OF THEMSELVES OR THE USER.

Each Order Form together with this Agreement form the entire agreement that applies to Courseware. If any conflict exists between any of these documents, this Agreement will govern, followed by Order Form. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify this Agreement or any Order Form in any way is hereby rejected and of no effect unless specifically agreed to in writing signed by symlr.

## 2. Subscription; License Grant.

During the Term (as hereinafter defined), symlr agrees to provide Customer with access to such Courses as are set forth on the Order Form entered into between symlr and Customer and incorporated herein by reference (collectively, the "Courseware"). "Courses" shall mean the online training modules provided by symlr and delivered through Customer's LMS. "LMS" shall mean the computer system(s), servers(s) and associated peripherals and software in the possession and control of Customer at the start of the Term of this Agreement, all of which are required for the successful use of the Courses.

In connection with the provision of the Courseware, symlr may provide the Customer with access to certain proprietary information and materials of symlr or certain symlr Partners, including without limitation the Courses, user manuals and technical manuals (collectively, the "Provided Materials"). symlr hereby grants, and Customer accepts, a limited, worldwide, nonexclusive, non-transferable, non-sublicensable license to use and access such Provided Materials in connection with the Courseware, which license shall expire at the end of the term of the applicable Order Form (or upon earlier termination of this Agreement) and shall be subject to the terms of this Agreement, the HealthcareSource Terms of Service and any applicable Order Form s. These Provided Materials are licensed and are not sold and, as between the parties hereto, symlr or any applicable symlr Partner will at all times retain exclusive ownership of all such Provided Materials, of all other proprietary information and materials in connection with the Courseware, and of all intellectual property rights related thereto, including but not limited to, trademarks, trade names, copyrights, enhancements, modifications, discoveries, designs, developments, improvements, processes, software code and programs, works of authorship, documentation, formulae, data, techniques, know-how, secrets or intellectual property rights or any interest therein and the related rights to make derivative works thereof. "symlr Partner" shall refer to an entity that has granted symlr the right to resell and deliver Courses owned by such entity.

All Courses of any symlr or symlr Partner are established and maintained by symlr or such symlr Partner and changes thereto may be made at any time, including the addition or deletion of content and courseware at symlr's or such symlr Partner's sole discretion. Customer agrees and covenants to cease to use in accordance with this Agreement and any Order Form any symlr or symlr Partner's Courses immediately upon written notice from symlr in the event that symlr (i) ceases to have sufficient rights in such symlr or symlr Partner's Courses to grant the rights granted to Customer under this Agreement or any Order Form ; (ii) is required by judicial or governmental order to cease or suspend publication of symlr or such symlr



Partner's Courses; or (iii) decides in its reasonable judgment to cease or suspend distribution of such symlr or symlr Partner's Courses due to a threat of legal action or liability.

### **3. Restrictions.**

Customer acknowledges that the Provided Materials are subject to copyrights owned by symlr or symlr Partners. Customer may only permit registered Authorized Users to access the Provided Materials. Customer may not resell any part of, or access to, the Provided Materials. In addition to the restrictions set forth in this Section 3, Customer hereby agrees that neither it nor any of its Authorized Users or any other of its employees or agents shall at any time: (i) copy, modify or create derivative works based upon the Provided Materials; (ii) decompile, disassemble, or reverse engineer the Provided Materials in whole or in part; (iii) defeat, disable or circumvent any protection mechanism related to the Provided Materials, including without limitation any code which necessitates or solicits agreement to any end user license; (iv) sell, license, sublicense, lease, rent, transmit, publish or distribute to any third party, or disclose, permit access to, or transfer to any third party other than an Authorized User any portion of the Provided Materials; (v) access, use or export the Provided Materials in violation of any U.S. Department of Commerce export administration regulations or other laws or regulations; or (vi) remove any copyright, trademark or other proprietary notices from the Provided Materials. "Authorized User" shall mean the administrators, employees and other designees of Customer that are properly authorized to access the LMS.

### **4. Pricing and Payment.**

Pricing and invoicing for the Courseware shall be as set forth in each Order Form. Late payments will be subject to a 1.5% penalty per month, or the maximum amount permitted by law, whichever is lower. symlr retains the right to set and modify pricing (a) subject to reseller agreements with symlr Partners; (b) to align with pricing offered by symlr Partners; or (c) annually in an amount equal to the published percentage increase in the Consumer Price Index - All Urban Consumers (Current Series) for the immediately preceding twelve (12) month period (provided that such increase is greater than zero percent (0%)), plus five percent (5%).

### **5. Customization.**

In the event Customer requests that symlr customize any of the Provided Materials or any other element of the Courseware for Customer's use by incorporating content or information provided by Customer to the symlr ("Customized Materials"), the Customer shall provide only such Customized Materials as are owned or licensed by the Customer for such use. In the event that such Customized Materials are not owned by Customer, Customer shall bear full responsibility for obtaining such licenses as are necessary and appropriate for the use of such third-party Customized Materials in connection with the Courseware. symlr shall have no responsibility or liability whatsoever with regard to such third-party Customized Materials and any such claim by third parties shall be subject to the indemnification provisions of Section 12. Under no circumstances will the Customer provide symlr with, or otherwise incorporate, any such third-party Customized Materials without first obtaining such licenses. If symlr determines, in its sole discretion, that Customer has breached this Section 5, symlr may terminate this Agreement immediately and without prior notice.

### **6. Governing Bodies.**

The Courses are Internet-based education programs designed to provide training to users and in some cases training on compliance with the laws and regulations of the United States, agencies of the United States Government or designees of the United States Government (collectively, "Governing Bodies"). The Courses do not address or include all provisions of the laws and regulations as published and interpreted by the Governing Bodies. Additionally, the Governing Bodies may revise or update the laws and regulations and these changes may not be reflected in the Courses at the time Customer is using the Courses. Neither



Customer nor its Authorized Users should rely solely on the information contained in the Courses and Customer and its Authorized Users should separately refer to the actual laws, regulations and interpretations published by the Governing Bodies. symlr and symlr Partners are under no obligation to update the Courses to reflect any changes in the laws or regulations of the Governing Bodies. symlr makes no representations or warranties that any particular symlr or symlr Partner's Course fulfills the regulatory compliance requirements of any particular healthcare organization, as it is the organization's responsibility to make such final determinations regarding regulatory compliance requirements.

## **7. Audit.**

Notwithstanding the foregoing, symlr shall have the right to monitor Customer's use of the Courseware during the Term of this Agreement. In the event that symlr discovers the actual number of users with respect to the Courseware exceeds the number of Authorized Users, symlr reserves the right, in its sole discretion, to modify the license fees charged under the terms of such Order Form (including retroactively) or to terminate such Order Form immediately.

## **8. Confidentiality.**

Customer acknowledges that the Provided Materials constitute property with intellectual property rights of substantial value to symlr and symlr Partners. Customer agrees that the Provided Materials will not be disclosed by Customer to any person or entity, except as expressly permitted pursuant to the terms of this Agreement, without the prior written consent of symlr. Customer agrees to take reasonable security measures to prevent the unauthorized use, duplication or distribution of the Provided Materials and their collective elements which will be at least equal to that which Customer uses to protect its own proprietary information. Customer shall ensure that any individual leaving its organization or who otherwise ceases to be an Authorized User is prohibited from accessing, copying or utilizing the Courseware or any Provided Materials. At the end of the Term, or upon any earlier termination of this Agreement, Customer shall return or certify in writing that it has destroyed all Provided Materials provided to Customer by symlr pursuant to the terms of this Agreement.

## **9. Term and Termination.**

This Agreement is effective commencing upon the date the Order Form is fully executed by Customer and symlr and shall remain in effect for the Term set forth on the Order Form (the "Term").

Either party may terminate this Agreement or any outstanding Order Forms if the other party has breached a material term of this Agreement (including without limitation, with respect to Customer, a breach of any provision of Section 3) or any Order Form, and the breaching party has failed to remedy such breach within thirty (30) calendar days following written notice from the non-breaching party; provided that in the event Customer breaches Section 3(iv) symlr may in its sole discretion immediately terminate this Agreement. Only if symlr has committed a material breach of this Agreement and has not cured such breach within thirty (30) days of receipt of such notice will Customer receive a prorated refund for the unexpired months for which payment has been received.

## **10. Survival.**

Sections 4, 8, 9, 10, 11, 12, 13, 15, 16, 17, and 18 shall survive any termination or expiration of this Agreement.



## 11. Notices.

Notice to customer shall be provided to the address listed on the Customer's Order Form.

All notices to symplr must be sent to:

symplr  
315 Capitol Street, Suite 100  
Houston, Texas 77002  
Attention: Chief Financial Officer  
With a copy to: Legal@symplr.com

or such other address as symplr may provide from time to time.

## 12. Warranty and Disclaimer.

symplr warrants and represents to Customer that it has full power and authority to enter into this Agreement and that it has all right, title, and interest necessary to provide the Courseware to Customer. Customer covenants, warrants and represents to symplr that it has full power and authority to enter into this Agreement and to make the covenants, representations and warranties in this Agreement.

SYMPLR DOES NOT WARRANT THAT THE COURSEWARE OR COURSES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS OR THAT THE COURSEWARE, COURSES, OR SYMPLR'S SERVER ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL MECHANISMS. IF CUSTOMER'S USE OF THE COURSEWARE RESULTS IN THE NEED FOR REPLACING DATA, SOFTWARE OR HARDWARE, SYMPLR WILL NOT BE RESPONSIBLE FOR ANY COSTS IN CONNECTION WITH SUCH REPLACEMENTS. SYMPLR DOES NOT WARRANT THAT (I) THE COURSES OR INFORMATION CONTAINED THEREIN ARE ACCURATE OR THAT ANY GENERAL OR PARTICULAR OR CORRECT RESULT CAN OR WILL BE ACHIEVED FROM YOUR APPLICATION OR USE THEREOF, OR (II) ANY DEFECTS OR ERRORS IN THE COURSES WILL OR CAN BE CORRECTED. THE COURSES MAY BE OUT OF DATE AND SYMPLR MAKES NO COMMITMENT TO UPDATE THE COURSES. THE USE OF THE COURSEWARE OR COURSES IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR HARM THAT RESULTS FROM SUCH ACTIVITIES. THE COURSEWARE AND COURSES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SYMPLR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SYMPLR MAKES NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR SECURITY OF THE COURSEWARE OR ANY COURSES.

## 13. Indemnification by symplr.

symplr will defend, indemnify and hold harmless Customer against all claims and expenses, including reasonable attorneys' fees, arising from any third-party claim alleging that any Provided Materials (collectively, the "Indemnified Products") infringe the United States copyright, trademark, or service mark rights of any third party (each, an "Indemnified Claim"), if Customer, in connection with such Indemnified Claim: (a) has used the Indemnified Products in full compliance with this Agreement; (b) promptly notifies symplr of such Indemnified Claim; (c) allows symplr to have sole control of the defense and settlement of such Indemnified Claim (though Customer may participate in its own defense at its own expense); and (d) provides symplr with the authority, information and assistance that symplr deems reasonably necessary for the defense and settlement of such Indemnified Claim. Customer shall not consent to any judgment or decree or do any other act in compromise of any such Indemnified Claim without first obtaining symplr's written consent. If an Indemnified Claim is brought or credibly threatened, symplr shall have the option, at its sole expense, to obtain for Customer the



right to continue using the Indemnified Products or modify the Indemnified Products so that they become non-infringing. If neither of the foregoing remedies are commercially feasible, symlr may terminate Customer's subscription with respect to the Courseware that utilize such Indemnified Product(s), and refund an amount equal to one-twelfth of the applicable annual fees paid by Customer for such Courseware for the subscription year in which the termination occurs, multiplied by the number of months remaining in that subscription year. The indemnity set forth in this Section 11 shall be Customer's sole and exclusive remedy for any intellectual property infringement claim arising out of Customer's use of the Courseware or Provided Materials.

#### **14. Indemnification by Customer.**

Customer will defend, indemnify and hold harmless symlr, its officers, directors, employees and agents, from and against any claims, actions or demands, alleging, arising or resulting from Customer's use of any Courseware (including making such Courseware available to Authorized Users), its provision of Customized Materials or its breach of the terms of this Agreement. symlr shall provide notice to Customer promptly of any such claim, suit, or proceeding and may assist Customer, at Customer's expense, in defending any such claim, suit or proceeding.

#### **15. Limitation of Liability for all Courseware.**

IN NO EVENT WILL THE AGGREGATE LIABILITY OF SYMLR FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT AND/OR FROM THE USE OF THE COURSEWARE OR PROVIDED MATERIALS PROVIDED HEREUNDER EXCEED THE HIGHEST AMOUNT PAID BY CUSTOMER TO SYMLR DURING THE TWELVE-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SYMLR HAVE ANY LIABILITY IN CONTRACT, TORT OR OTHERWISE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS, REVENUE OR DATA) OR PUNITIVE DAMAGES ARISING OUT OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SYMLR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SYMLR HAVE ANY LIABILITY FOR CLAIMS RELATING TO BUSINESS DECISIONS MADE BY CUSTOMER IN RELIANCE UPON ANY OF THE COURSEWARE.

#### **16. No Assignment.**

This Agreement will inure to the benefit of and be binding upon the parties, their successors and permitted assigns. This Agreement may not be assigned or otherwise transferred by Customer (whether via sale, merger, change in control, by operation or law or otherwise), without symlr's prior written consent, and any such purported assignment or transfer shall be void.

#### **17. Governing Law; Venue.**

This Agreement shall be governed by the internal laws of the State of Texas without regard to its conflicts of law rules. The provisions of the United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Agreement. Any disputes arising under this Agreement shall be brought exclusively in the state and federal courts located in Harris County, Texas, and the Parties waive any objections to jurisdiction or venue of any such court. In the event of any dispute under this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

## **18. Severability; No Waiver.**

If any one or more of the provisions in this Agreement are determined invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement and this Agreement will be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Agreement; provided, however, if a court finds any provision of this Agreement may be rewritten to be valid, legal and enforceable, the parties agree that such court shall rewrite the provision.

The waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder shall not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.

## **19. Force Majeure.**

Excluding Customer's payment obligations hereunder, each party's failure to perform under this Agreement shall be excused to the extent an act of God, act of government, civil commotion, earthquake, epidemic, pandemic, explosion, fire, flood, labor strike, national emergency, quarantine, riot, terrorist attack, war, strikes, or any other occurrence or emergency beyond the party's control makes such performance (in whole or in part) impossible, illegal or commercially impracticable. If the period of non-performance continues for more than thirty (30) days, the party not affected may terminate any or all affected Order Forms or SOWs by giving fifteen (15) days' written notice to the affected party.

## **20. Entire Agreement.**

This Agreement along with the Order Form in which it is referenced the entire agreement that applies to the Courseware. symplr may amend this Agreement at any time in its sole discretion, effective upon posting the amended Agreement at the domain <https://www.symplr.com> or its subdomains where the prior version of this Agreement was posted. symplr may take reasonable steps to communicate these changes through any contact method symplr has established with Customer (including, without limitation, email communication, notifications within the Software, or notification within Customer's billing), but Customer agrees to periodically review the site in which this Agreement is posted to be aware of any changes or modification. Notwithstanding the foregoing, Customer's continued use of the Courseware will be deemed its conclusive acceptance of all such changed or modified terms and conditions.

## **21. Miscellaneous.**

Customer hereby agrees that a breach of Sections 3 or 8 of this Agreement will cause irreparable injury to symplr, that money damages would not be a sufficient remedy for any failure to comply with the provisions of this Agreement and that in addition to all other remedies in the event of any failure or alleged or threatened failure to comply with the provisions of this Agreement symplr shall be entitled to equitable relief, including injunction and specific performance, in each case without being required to prove irreparable harm or damages, post a bond or otherwise provide security. This provision shall not in any way limit such other remedies as may be available to the parties at law or in equity. Unless otherwise expressly identified as exclusive in this Agreement, no remedy by either party shall be considered an exclusive remedy, and such party is entitled to pursue any remedy available under this Agreement or otherwise at law or equity. No terms of this Agreement are enforceable by any person who is not a party to it.