

## CUE® HEALTH TERMS OF USE AND END USER LICENSE AGREEMENT

Updated: January 12, 2022

Welcome to the Cue Health Terms of Use (“**Terms of Use**”) by Cue Health Inc. (“**Cue**,” “**our**,” “**we**,” or “**us**”). These Terms of Use and End User License Agreement (collectively “**Terms**”) govern your use of the Cue Products described below (the “**Cue Products**”).

Please read these Terms in full before using the Cue Products. THESE TERMS CONTAIN IMPORTANT PROVISIONS THAT LIMIT OUR LIABILITY AND THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF CERTAIN DISPUTES, INCLUDING PROVISIONS THAT REQUIRE YOU TO BRING CLAIMS ON AN INDIVIDUAL BASIS AND NOT AS PART OF A CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. By clicking “ACCEPT TO CONTINUE” or by accessing or using the Cue Products, you agree to be legally bound by these Terms and any amendments of the Terms. If you do not agree to these Terms (including the class action waiver), do not access or use the Cue Products.

### 1. The Cue Products.

These Terms apply to your use of any of the Cue Products. You will not use any of the Cue Products in a manner inconsistent with (i) these Terms or (ii) all applicable statutes, regulations and other laws. The Cue Products governed by these Terms are described below:

- (a) Cue COVID-19 Test for Home and Over The Counter (OTC) Use. This Cue Product is regulated by the U.S. Food and Drug Administration (“**FDA**”) as a medical device and is authorized for non-prescription home use in adults (self-swabbing) or children  $\geq 2$  years of age (swabbed by an adult) with or without symptoms or other epidemiological reasons to suspect COVID-19. More information about this Cue test authorization can be found [here](#). This Cue Product includes the following:
  - **Cue Health Monitoring System**: reusable Cue Cartridge Reader, Power Adapter, and Charging Cable
  - **Cue COVID-19 Test for Home and OTC Use Cartridge Pouch**: single-use COVID-19 Test Cartridge and single-use Sample Wand
  - **Cue Health Mobile Application (“Cue Health App”)**: further described below and available for download from the Apple® App Store® and Google Play™ Store onto a [compatible mobile smart device](#).
- (b) Cue COVID-19 Test for Professional Use (for professional or healthcare provider use). This Cue Product is regulated by the FDA as a medical device authorized for use by healthcare providers, including health care professionals and laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and in patient care settings (Point of Care) operating under a CLIA Certificate of Waiver, Certificate of Compliance, or Certificate of Accreditation. More information about this Cue test authorization can be found [here](#). This Cue Product includes the following:
  - **Cue Health Monitoring System**: reusable Cue Cartridge Reader, Power Adapter, and Charging Cable
  - **Cue COVID-19 Test for Professional Use Cartridge Pouch**: single-use COVID-19 Test Cartridge and single-use Sample Wand
  - **Cue Health Mobile Application (“Cue Health App”)**: further described below and available for download from the Apple App Store and Google Play Store onto a [compatible mobile smart device](#).
- (c) Cue Health App. The Cue Health App provides you with step-by-step instructions on how to

insert the Cue Test Cartridge into the Cue Cartridge Reader, collect specimens using a Cue Sample Wand, insert the Sample Wand into the Cue Test Cartridge, and run the test (collectively the “**Cue Test**”). When you run a Cue Test, the Cue Health App will display the results automatically on your compatible mobile smart device via BLUETOOTH® connection. The Help Center within the Cue Health App provides additional instructional documentation for you to view. The Cue Health App also provides step-by-step instructions on additional optional features, including Cue’s Virtual Care Service, Cue Supervised Test, and Cue COVID-19 Sequencing Kit.

- (d) Cue+™ Membership. This Cue Product allows individuals who opt to purchase a membership or individuals who receive a membership purchased by their employer (“Cue+ Members”) to receive additional services from Cue and through the Cue Health App, which may include:
  - Cue+ Essential™ Membership includes ten (10) Cue COVID-19 Test for Home and OTC Use Test Cartridge Pouches per year and Cue Virtual Care Service, as described below.
  - Cue+ Complete™ Membership includes twenty (20) Cue COVID-19 Test for Home and OTC Use Test Cartridge Pouches per year, Cue Virtual Care Service, and Supervised Test Services, as described below.
- (e) Cue Virtual Care (Furnished by 98point6®). This Cue Product allows Cue+ Members to receive telehealth services from 98point6 through the Cue Health App. Virtual care can only be provided to individuals who are physically located in the United States at the time they request and receive virtual care services through the Cue Health App. Virtual care services include a text-based visit with an U.S.-based, board-certified physician affiliated with the telehealth service 98point6. The physicians are not employees or agents of Cue. Any information or advice received through a telehealth session comes from the physician affiliated with 98point6 and not from Cue. The 98point6-affiliated physicians can: review test results; answer your health-related questions; diagnose and treat conditions; prescribe medications when appropriate; order lab tests when appropriate; and send records of your consultation to another provider. This Cue Product is only available to Cue+ Members and any profiles under a Cue+ account. Please see the 98point6 [Terms of Use](#) and [Privacy Policy](#) for more information about the virtual care provided by 98point6.
- (f) Cue Supervised Test. This Cue Product allows Cue+ Complete Members to satisfy [U.S. Center for Disease Control \(CDC\) Requirements for Proof of Negative COVID-19 Test for Air Passengers Arriving into the U.S.](#) This Cue Product requires a Cue Health Monitoring System, a Cue COVID-19 Test for Home and OTC Use, and the Cue Health App on a compatible mobile device with a functioning video camera and microphone. You also need a valid, government-issued ID to confirm your identity and link your identity to the test result. Accordingly, the name and birth date on the Cue Health App profile must exactly match the name and birth date on the government-issued ID of the individual receiving a Cue Supervised Test. Sessions conducted through the Cue Health App are supervised remotely in real-time by a proctor furnished by Truepill, Inc. or RDI Corporation. The proctor verifies the identity of the person(s) being tested and observes the self-test being taken. You will receive a report in the Cue Health App that confirms that the test was proctored in a manner consistent with CDC requirements. This offering is available only to Cue+ Complete Members.
- (g) Cue COVID-19 Sequencing Kit. This Cue Product allows users of the Cue COVID-19 Test for Home and OTC Use who have received a “Positive” COVID-19 test result on the Cue Health App to voluntarily obtain sequencing of the viral genome through Helix OpCo, LLC for research use

only. This Cue Product should not be used for diagnostic or medical purposes but instead as part of a broader research study on the SARS-CoV-2 virus. This Cue Product includes the following:

- Self-Collection Kit, which includes a nasal swab, collection tube, biohazard bag, and shipping materials
- Shipment of the Self-Collection kit to and from your selected address

2. **FDA Authorization.** The Cue Products have not been FDA cleared or approved; but the Cue COVID-19 Test for Home and Over The Counter (OTC) Use and the Cue COVID-19 Test for Professional Use have been authorized by the FDA under an Emergency Use Authorization (“EUA”). Such products have been authorized only for the detection of nucleic acid from SARS-CoV-2, not for any other viruses or pathogens; and, the emergency use of such products is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization is revoked sooner.

**3. Your Cue Health Account.**

When you install the Cue Health App on a mobile smart device and register for an account, you will be asked to set up a profile. You may set up multiple profiles in your account for your patients (for laboratories/health care providers/health care professionals) and/or your children, family members, or others (for consumers) and may save Cue Test results under any of these profiles. The Cue Health App will display historical test results for each profile.

By creating a Cue Health App account, you represent and warrant the following: (a) you are an adult of at least 18 years of age (or an adult under applicable state law), (b) you have the legal ability and authority to enter into these Terms, (c) you have provided accurate and complete information when establishing your account and creating profiles (“**Registration Information**”), (d) you have the authority and consent of any individual if you create a profile on their behalf, (e) to the extent you create a profile on behalf of another individual, such individual has reviewed the terms of the Cue Health Privacy Policy, (f) you will take all reasonable steps necessary to maintain and promptly update the Registration Information to ensure that it is accurate and complete, (g) you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country, and (h) are not listed on the U.S. Treasury Department’s Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List.

If you provide any information that is untrue or inaccurate about yourself or others for whom you establish a profile, or Cue has reasonable grounds to suspect that such information is untrue or inaccurate, Cue may suspend or terminate your account immediately.

Additionally, you agree to maintain the strict confidentiality of your account and any passwords created by you for your use of the Cue Products, and you agree not to allow other persons or entities to use any username(s) or password(s) that are created by you. You alone shall be responsible for all of the activity that occurs in your account, including failure to obtain the proper consent from any individuals for whom you created an account. We cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations. If you wish to cancel a username or password, or if you become aware of any loss, theft or unauthorized use of a username or password, please notify us immediately. We reserve the right to delete or change any username or password at any time and for any reason.

The Cue Health App is not intended for use by children under the age of 18 (except for emancipated minors). If you are under 18 years of age and are not an emancipated minor, consent from a parent or guardian is required. Cue Health does not seek to gather personal information from or about persons under the age of 18 without the consent of a parent or guardian unless the person is an emancipated minor.

4. **Use Of the Cue Products.** As a user of the Cue Products, you acknowledge that:
  - (a) It is your responsibility to use the Cue Health App appropriately to obtain the results of the Cue Test. Cue is not responsible if you do not use the Cue Health App and the Cue Test as directed.
  - (b) It is very important to read the Cue Health Monitoring System User Manual and the Instructions for Use for the specific Cue Test being used, which include the indications and contraindications for use of such Cue Product.
  - (c) You will not use these products for any purposes prohibited by United States law.
5. **Privacy.** We strive to maintain the privacy of any information that you elect to provide through the Cue Health App ("**Personal Information**"). Please review our Privacy Policy, which is available in the Cue Health App and on the Cue website, for a full description of the Personal Information that we collect and how we use that information.
  - (a) **HEALTH CARE PROVIDERS, HEALTH CARE PROFESSIONALS, OR COVERED ENTITIES PLEASE READ:** You represent and warrant that use of the Cue Products will be used in compliance with all applicable laws, including applicable federal and state privacy and data security laws. For Covered Entities under HIPAA (as defined in the Business Associate Terms below), unless you have separately entered into a Business Associate Agreement with Cue Health, the below Business Associate Terms shall apply.

#### **BUSINESS ASSOCIATE TERMS:**

##### **I. General Provisions**

- a. **Applicability of these Business Associate Terms.** If you are a Covered Entity or you are an employee or other workforce member of a Covered Entity or your access to and/or use of the Cue Products is paid for and/or sponsored by a Covered Entity ("**Your Covered Entity**") under the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations as amended from time to time (collectively, "HIPAA"), then these Business Associate Terms (these "**BA Terms**") are part of these Terms between you and Cue. These BA Terms apply when Cue creates, receives, maintains, transmits, uses or discloses Protected Health Information on behalf of Your Covered Entity ("**PHI**") as a Business Associate.
- b. **Authority.** If you are a workforce member of Your Covered Entity, then you represent and warrant that you are authorized by Your Covered Entity to enter into these Terms.
- c. **Effect.** To the extent that Cue receives PHI in order to perform activities as a Business Associate, the terms and provisions of these BA Terms shall supersede any conflicting or inconsistent terms and provisions in these Terms to the extent of such conflict or inconsistency.
- d. **Defined Terms.** Capitalized terms used in these BA Terms without definition shall have the respective meanings assigned to such terms by HIPAA.

##### **II. Obligations Of Cue**

- a. **Use and Disclosure of PHI.** Cue may use and disclose PHI as permitted or required under these Terms or as Required by Law but shall not otherwise use or disclose any PHI. Cue shall not use or disclose PHI received from Your Covered Entity in any manner that would constitute a violation of HIPAA if so used or disclosed by Your Covered Entity (except as set forth in Sections 2.1(a), (b) and (c) of these BA Terms). To the extent Cue carries out any of Your Covered Entity's obligations under the HIPAA privacy standards, Cue shall comply with the requirements of the HIPAA privacy standards that apply to Your Covered Entity in the performance of such obligations. Without limiting the generality of the foregoing, Cue is permitted to use or disclose PHI as set forth below:
- i. Cue may use PHI internally for Cue's proper management and administration or to carry out Cue's legal responsibilities;
  - ii. Cue may disclose PHI to a third party for Cue's proper management and administration, provided that the disclosure is Required by Law or Cue obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify Your Covered Entity of any instances of which the third party is aware in which the confidentiality of the PHI has been breached;
  - iii. Cue may use PHI to provide Data Aggregation services relating to the Health Care Operations of Your Covered Entity if required or permitted under these Terms;
  - iv. Cue may use PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Cue may use or disclose de-identified health information for any purpose permitted by law;
  - v. Cue may submit PHI for reporting to federal, state, or local public health authorities when permitted or required;
  - vi. Cue may use and disclose PHI to request an authorization, consent or other form of permission from an Individual and may use and disclose PHI in accordance with any such permission obtained from an Individual; and
  - vii. Cue may use and disclose PHI (including, without limitation, a Limited Data Set) for Research as permitted by HIPAA and other applicable law.
- b. **Safeguards.** Cue shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted or required by these BA Terms. In addition, Cue shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media ("E PHI") that it creates, receives, maintains or transmits on behalf of Your Covered Entity. Cue shall comply with the HIPAA Security Rule with respect to E PHI.
- c. **Minimum Necessary Standard.** To the extent required by the "minimum necessary" requirements of HIPAA, Cue shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- d. **Mitigation.** Cue shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to Cue) of a use or disclosure of PHI by Cue in violation of these BA Terms.
- e. **Trading Partner Agreement.** Cue shall not take any of the following actions: (a) change the definition, Data Condition, or use of a Data Element or Segment in a Standard, except where necessary to implement state or federal law, or to protect against fraud and abuse, (b) add any Data Elements or Segments to the maximum defined Data Set, (c) use any code or Data Elements that are either marked "not used" in the Standard's Implementation Specification

or are not in the Standard's Implementation Specification(s), or (d) change the meaning or intent of the Standard's Implementation Specification(s).

- f. **Subcontractors.** Cue shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor that creates, receives, maintains or transmits PHI on behalf of Cue. Cue shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Cue under these BA Terms.
- g. **Reporting Requirements.**
  - i. If Cue becomes aware of a use or disclosure of PHI in violation of these Terms by Cue or a third party to which Cue disclosed PHI, Cue shall report the use or disclosure to Your Covered Entity without unreasonable delay.
  - ii. Cue shall report any Security Incident involving EPHI of which it becomes aware in the following manner: (1) any actual, successful Security Incident will be reported to Your Covered Entity in writing without unreasonable delay and in no case later than 30 days after discovery of the Security Incident, and (2) all attempted, unsuccessful Security Incidents (e.g., unsuccessful log-in attempts) are hereby deemed reported to Your Covered Entity.
  - iii. Cue shall, following the discovery of a Breach of Unsecured PHI, notify Your Covered Entity of the Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later than 30 days after discovery of the Breach.
- h. **Access to PHI.** Within 15 business days of a written request by Your Covered Entity for access to PHI about an Individual contained in any Designated Record Set of Your Covered Entity maintained by Cue, if any, Cue shall make available to Your Covered Entity such PHI for so long as Cue maintains such information in the Designated Record Set. If Cue receives a request for access to PHI directly from an Individual, Cue shall forward such request to Your Covered Entity within ten business days. Your Covered Entity shall have the sole responsibility to make decisions regarding whether to approve a request for access to PHI.
- i. **Availability of PHI for Amendment.** Within 15 business days of receipt of a written request from Your Covered Entity for the amendment of an Individual's PHI contained in any Designated Record Set of Your Covered Entity maintained by Cue, if any, Cue shall provide such information to Your Covered Entity for amendment and incorporate any such amendments in the PHI (for so long as Cue maintains such information in the Designated Record Set) as required by 45 C.F.R. § 164.526. If Cue receives a request for amendment to PHI directly from an Individual, Cue shall forward such request to Your Covered Entity within ten business days. Your Covered Entity shall have the sole responsibility to make decisions regarding whether to approve a request for an amendment to PHI.
- j. **Accounting of Disclosures.** Within 30 business days of written notice by Your Covered Entity to Cue that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Cue shall make available to Your Covered Entity such information as is in Cue's possession and is required for Your Covered Entity to make the accounting required by 45 C.F.R. § 164.528. If Cue receives a request for an accounting directly from an Individual, Cue shall forward such request to Your Covered Entity within ten business days. Your Covered Entity shall have the sole responsibility to provide an accounting of disclosures to the Individual.
- k. **Availability of Books and Records.** Following reasonable advance written notice, Cue shall make Cue's internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Cue on behalf of, Your Covered Entity available to the Secretary for purposes of determining Your Covered Entity's compliance with HIPAA.

### III. **Obligations Of Covered Entity**

- a. **Permissible Requests.** Covered Entity shall not request Cue to use or disclose PHI in any manner that would not be permissible under HIPAA if done directly by Covered Entity (except as provided in Sections II(a)(i), (ii) and (iii) of these BA Terms).
- b. **Minimum Necessary PHI.** When Covered Entity discloses PHI to Cue, Covered Entity shall only provide the minimum amount of PHI necessary for the accomplishment of Cue's purpose.
- c. **Permissions; Restrictions.** Covered Entity represents and warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under HIPAA and other applicable law for the disclosure of PHI to Cue. Covered Entity shall notify Cue of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Cue's use or disclosure of PHI. Covered Entity shall not agree to any restriction on the use or disclosure of PHI under 45 C.F.R. § 164.522 that restricts Cue's use or disclosure of PHI under these Terms unless such restriction is Required By Law or Cue grants Cue's written consent, which consent shall not be unreasonably withheld.
- d. **Notice of Privacy Practices.** Except as Required By Law, with Cue's consent or as set forth in these Terms, Covered Entity shall not include any limitation in the Covered Entity's notice of privacy practices that limits Cue's use or disclosure of PHI under these Terms.

### IV. **Termination Of These Terms**

- a. **Termination Upon Breach of these BA Terms.** Any other provision of these Terms notwithstanding, either party (the "**Non-Breaching Party**") may terminate these Terms upon 90 days advance written notice to the other party (the "**Breaching Party**") in the event that the Breaching Party breaches these BA Terms in any material respect and such breach is not cured to the reasonable satisfaction of the Non-Breaching Party within such 90-day period.
- b. **Return or Destruction of PHI upon Termination.** Upon expiration or earlier termination of these Terms, Cue shall either return or destroy all PHI received from Covered Entity or created or received by Cue on behalf of Covered Entity and which Cue still maintains in any form. Notwithstanding the foregoing, to the extent that Cue determines that it is not feasible to return or destroy such PHI, the terms and provisions of these BA Terms shall survive termination of these Terms and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

### 6. **License to Use the Cue Health App**

The Cue Health App and any third-party software, documentation, or interfaces accompanying this License are licensed, not sold, to you. Except for the limited license granted in these Terms, Cue retains all right, title and interest in the Cue Health App, including copyrights, patents, trademarks and trade secret rights.

Cue grants you a revocable, nontransferable, nonexclusive license to use the Cue Products as described in these Terms. You may download the Cue Health App on your mobile smart device and use the Cue Products, as permitted by these Terms. The license granted to you in these Terms is restricted as follows:

- (a) **Limitations On Copying And Distribution.** You may not copy or distribute the Cue Health App except to the extent that copying is necessary to use the Cue Health App for purposes set forth herein.
- (b) **Limitations On Reverse Engineering And Modification; APIs.** You may not (i) access or use the Cue Health App programming interfaces ("**APIs**") for any purpose other than your licensed use

- of the Cue Health App, (ii) reverse engineer, decompile, disassemble, attempt to derive the source code of, or modify or create works derivative of the Cue Health App, any updates or part thereof, except to the extent expressly permitted by applicable law.
- (c) **Sublicense, Rental And Third-Party Use.** You may not assign, transfer, sublicense, rent, timeshare, loan, lease or otherwise transfer the Cue Health App, or directly or indirectly permit any third party to copy and install the Cue Health App on a device not owned and controlled by you. If you transfer ownership of your mobile smart device, you must delete the Cue Health App from the mobile smart device before doing so.
  - (d) **Individual Use.** You may not distribute or make the Cue Health App available over a network where it could be used by multiple devices at the same time. The Cue Health App must be downloaded on each mobile smart device.
  - (e) **Proprietary Notices.** You may not remove any proprietary notices (e.g., copyright and trademark notices) from the Cue Health App or its documentation.
  - (f) **Use In Accordance With Documentation.** All use of the Cue Health App must be in accordance with its then current documentation, including user guides, which can be found within the Cue Health App.
  - (g) **Confidentiality.** You must hold the Cue Health App and any related documentation in strict confidence.
  - (h) **Compliance With Applicable Law.** You are solely responsible for ensuring your use of the Cue Health App is in compliance with all applicable foreign, federal, state and local laws, and rules and regulations.

## **7. Ownership Of Materials And Restrictions On Use**

Cue is, unless otherwise stated, the owner of all copyright, trademark, patent, trade secret, database and other proprietary rights to information on the Cue Products, including without limitation, the Cue Health App. Our Products and all other material provided and the collection and compilation and assembly thereof are the exclusive property of Cue and are protected by U.S. and international copyright laws. If any product name or logo does not appear with a trademark (TM), that does not constitute a waiver of intellectual property rights that Cue has established in any of its products, services, features, or service names or logos.

You agree to observe copyright and all other applicable laws and may not use the content in any manner that infringes or violates the rights of any person or entity, is unlawful in any jurisdiction where the Cue Products are being used, or that is prohibited by these Terms. You agree not to use the Cue Products in any manner that could damage, disable, overburden, or impair any of our equipment or interfere with any other party's use and enjoyment of the Cue Products, or any contents of the Cue Products. You may not attempt to gain access to any portion of the Cue Products other than those for which you are authorized.

The Cue Health App and related documentation are "Commercial Items" as defined in federal regulations. If Commercial Computer Software and Commercial Computer Software Documentation are licensed to U.S. Government end users, they are licensed (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

The Cue Health App is provided for use in the United States only; it is not sold, licensed, or exported to users who reside outside the United States.

## **8. Cue Products Availability**

We take reasonable steps to ensure that the Cue Health App is available 24 hours every day, 365 days per year. However, mobile applications do sometimes encounter downtime due to server and other



technical issues as well as issues beyond our reasonable control. Where possible, we will try to give our users advance warning of maintenance issues but shall not be obliged to do so. We will not be liable if the Cue Products are unavailable at any time.

While reasonable efforts are made to ensure that all content provided on the Cue Health App does not contain computer viruses and/or harmful materials, you should take reasonable and appropriate precautions to protect your mobile smart device, and you should ensure that you have a complete and current backup of the applicable items on your mobile smart device. We disclaim any liability for the need for services or replacing equipment or data resulting from your use of the Cue Products. While every effort is made to ensure smooth and continuous operation, we do not warrant the Cue Products will operate error free.

## **9. Warranties and Disclaimers**

THE INFORMATION PROVIDED BY THE CUE PRODUCTS IS NOT INTENDED TO TREAT, CURE, OR PREVENT ANY DISEASE BUT TO ASSIST YOU IN A DIAGNOSIS THROUGH USE OF THE CUE TEST.

Cue represents, solely in regards to the Cue Reader, that it will operate substantially in conformance with Cue's published specifications (the "**Reader Warranty**"). The Cue Reader Warranty period shall be twelve (12) months from the date of shipment. In no event shall Cue have any obligation to replace, in whole or in part, the Cue Product where any defect is as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by You or other users, (iv) use of the Cue Products in a manner for which it was not designed, including any use that is not in accordance with Cue Product labeling or IFU, (v) causes external to the Cue Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Cue Products, (vii) use of the Cue Products in combination with equipment or software not supplied by Cue, or (viii) any repair, service, alteration, or tampering with the Cue Products by any individual or entity other than Cue. CUE'S SOLE OBLIGATION AND YOUR EXCLUSIVE REMEDY FOR BREACH OF ANY THE READER WARRANTY SHALL BE, AT CUE'S OPTION, TO REPLACE THE CUE READER OR REFUND THE PURCHASE PRICE.

EXCEPT FOR THE READER WARRANTY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CUE PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CUE HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE CUE PRODUCTS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. WITHOUT LIMITATION THEREOF, WE DO NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE CUE PRODUCTS OR THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY THE CUE PRODUCTS WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE CUE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE CUE PRODUCTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CUE OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

You acknowledge and agree to assume full responsibility for the risks associated with the use of the Cue Products, and that the use of such is at your sole risk. Cue is not liable to you, or any third party, for any decision made or action taken by you or any third party based on information contained on or within the Cue Products; or, due to reliance upon information contained on or within the Cue Products. You are

solely responsible for verifying the accuracy of all personal information contained within the Cue Products and for obtaining the consent of those for whom you create a profile on their behalf. Cue is not responsible for any loss of the data entered into the Cue Health App if you lose your mobile smart device or delete the mobile application without previous synchronization (manual or automatic) of data to the cloud server. You are solely responsible for any data fees on your mobile smart device or charges incurred related to your transfer of data via the internet.

Cue, its suppliers and licensors shall have no liability for errors, unreliable operation, or other issues resulting from use of the Cue Products on or in connection with rooted or jail broken devices or use on any mobile smart device that is not in conformance with the manufacturer's original specifications, including use of modified versions of the operating system (collectively, "Modified Devices"). Use of the Cue Health App on Modified Devices will be at your sole and exclusive risk and liability.

In addition, Cue expressly disclaims any liability and is not responsible, and you acknowledge and agree that Cue is not liable or responsible, for: (a) any errors in data or data entry, whether caused by you or by hardware, software or otherwise; (b) errors in results, (c) errors in diagnostic or therapeutic conclusions relying on erroneous data or data entry; (d) malfunction or loss of use of any hardware or software; (e) loss or degradation of communications between you, the Cue Products, and/or Cue for any reason not within control of Cue; (f) personal injury; (g) your failure to correct erroneous data or to comply with proper instructions; (h) delay, failure, interruption or corruption of data, and (i) errors resulting from unauthorized access to the Cue Products.

- (a) **FOR HEALTHCARE PROVIDERS, PLEASE READ:** THE CUE PRODUCTS ARE DESIGNED TO HELP YOU, BUT YOU SHOULD EXERCISE YOUR OWN CLINICAL JUDGMENT WHEN USING THE CUE PRODUCTS (CONTENT AND TOOLS). THE CONTENT AND TOOLS PROVIDED BY THE CUE PRODUCTS DO NOT CONSTITUTE INDEPENDENT MEDICAL ADVICE. CUE IS NOT ENGAGED IN THE PRACTICE OF MEDICINE.
- (b) **FOR INDIVIDUAL USERS, PLEASE READ:** IF YOU EXPERIENCE A MEDICAL EMERGENCY, STOP USING THE CUE PRODUCTS AND CALL 911. YOU ACKNOWLEDGE THAT THE INFORMATION PROVIDED THROUGH OUR CONTENT AND TOOLS ARE NOT INTENDED, OR TO BE CONSTRUED, AS INDEPENDENT MEDICAL ADVICE OR TREATMENT, AND IS NOT A SUBSTITUTE FOR CONSULTATIONS WITH QUALIFIED HEALTH CARE PROFESSIONALS WHO ARE FAMILIAR WITH YOUR INDIVIDUAL MEDICAL NEEDS. CUE IS NOT ENGAGED IN THE PRACTICE OF MEDICINE.

#### **10. Limitation Of Liability**

UNDER NO CIRCUMSTANCES SHALL CUE OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUPPLIERS, OR LICENSORS BE RESPONSIBLE FOR PERSONAL INJURY OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE CUE PRODUCTS OR YOUR RELIANCE ON OR USE OF THE CUE PRODUCTS, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, THE AGGREGATE LIABILITY OF CUE TO YOU ARISING UNDER OR IN CONNECTION WITH THESE TERMS IS LIMITED TO THE GREATER OF (1) THE AMOUNT THAT YOU PAID TO CUE FOR THE CUE TEST ON WHICH THIS DISPUTE IS BASED IN THE PAST SIX (6) MONTHS OR \$75.00, WHICHEVER IS GREATER. If you live in a jurisdiction that does not allow any of the above exclusions or limitations of liability or any of the disclaimers of warranties above, such exclusions or limitations will not apply to you, but only to the extent such exclusions or limitations are not allowed. In no event shall

Cue be liable to you for damages (other than as may be required by applicable law in cases involving personal injury).

NEITHER CUE NOR ANY OF ITS SUPPLIERS OR LICENSORS (EXCEPT TO THE EXTENT OF ANY LIABILITY BY 98POINT6) SHALL BE LIABLE FOR ANY PROFESSIONAL ADVICE OR OTHER HEALTHCARE ITEMS AND SERVICES THAT YOU OBTAIN FROM 98POINT6, ANY AGENT OR CONTRACTOR OF 98POINT6 OR A PHYSICIAN AFFILIATED WITH 98POINT6 VIA THE TELEHEALTH SERVICE PROVIDED BY 98POINT6 THROUGH THE CUE HEALTH APP NOR FOR ANY INFORMATION OBTAINED FROM THE TELEHEALTH SERVICES. YOU ACKNOWLEDGE THAT YOUR RELIANCE ON ANY PHYSICIANS OR OTHER PERSONS OR INFORMATION PROVIDED BY THE TELEHEALTH SERVICES IS SOLELY AT YOUR OWN RISK AND YOU ASSUME FULL RESPONSIBILITY FOR ALL RISK ASSOCIATED THEREWITH. Cue does not make any representations or warranties about the training or skill of any physicians or other persons providing telehealth services. You are ultimately responsible for choosing your particular physician through the telehealth services furnished by 98point6.

The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

**11. Indemnification.** You agree to defend, indemnify, and hold Cue, our officers, directors, employees, volunteers, agents, and contractors harmless from and against any claims, actions or demands, liabilities and settlements, including without limitation, legal and accounting fees, resulting from or alleged to result from, your use of and access to the Cue Products, your violation of these Terms or your violation of any third-party right, including without limitation any trademark, copyright or other proprietary or privacy right, any claim for personal injury, death or damage to property, or breach or loss of data that you (or unauthorized users using your account) have transmitted, uploaded, downloaded, stored, managed or in any other way accessed, using the Cue Products. Cue reserves the right to assume the exclusive defensive and control of any matter subject to indemnification by you (without limiting your indemnification obligations with respect to the matter). In that case, you agree to cooperate with our defenses of those claims.

**12. Third Party Content/Liability**

These Terms are only applicable to the use of the Cue Products. The Cue Health App may enable access to third-party services and websites, including Truepill, Helix OpCo, LLC, and 98point6 (“**External Services**”). We do not have any control over External Services, and as such, Cue, its suppliers and licensors, disclaim all liability from your use of those External Services. Any link on or within the Cue Products to another site is not an endorsement of such other site. No judgment or warranty is made with respect to the accuracy, timeliness, or suitability of the content of any site to which we may link, and we take no responsibility for it. To the extent you choose to use such External Services, you agree to use such services at your sole risk and you are solely responsible for compliance with any applicable laws. Cue reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to you.

Your wireless carrier, the manufacturer and retailer of your mobile smart device, the developer of the operating system for your mobile smart device, the operator of any application store, marketplace, or similar service through which you obtain the Cue Health App, and their respective affiliates, suppliers, and licensors are not parties to these Terms and they do not own and are not responsible for the Cue Health App. You are responsible for complying with all of the application store and other applicable terms and conditions by these or other sites or services.

**13. Terms of Sale for Direct to Consumer Sales of the Cue Products**

This Section only applies if You are purchasing the Cue Products directly from Cue, and not pursuant to a program offered by an employer, healthcare provider, or insurer.

By purchasing Cue Products and/or enrolling in a Cue+ Membership directly from Cue (a “**Direct Order**”), You are agreeing to purchase the Cue Products subject to the following additional terms and conditions:

- (a) All Direct Orders are subject to availability of the applicable Cue Products.
- (b) In order to submit a Direct Order, You must be an adult of at least 18 years of age (or an adult under applicable state law).
- (c) WHEN PLACING A DIRECT ORDER, YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT TO USE ANY PAYMENT METHOD THAT YOU CHOOSE TO USE TO COMPLETE ANY SUCH DIRECT ORDER. By providing Your payment, shipping, and billing information, You are granting Us the right to provide such information to third parties for purposes of facilitating such Direct Order. We may need to verify Your information prior to the acceptance of the Direct Order.
- (d) All Direct Order sales are final. Please contact customer support in the event of Cue Product malfunction or invalid/canceled results.
- (e) Direct Orders are only available to end-user customers only, and We reserve the right to reject or cancel Your Direct Order if we suspect you are purchasing products for an entity, association, or for resale.
- (f) If a Cue test renders an “Invalid” or “Canceled” test result, You may select the link to “Rewards Center” on the test result summary to receive a credit for a free replacement test that You can redeem at any time. If Cue determines that a Cue account uses the “Rewards Center” excessively or otherwise abuses the credit feature, Cue reserves the right deny You subsequent credits or deny access to the “Rewards Center.”
- (g) Cue+ Memberships. The Cue+ Memberships are non-cancelable during the twelve (12) month term of the membership. This policy is in place so that people do not take advantage of our discount pricing for a one-time purchase. We want to make sure our subscription testing is affordable for those who believe in the merits of regular testing. You understand and agree that by entering into a Direct Order you are authorizing Cue to charge the method of payment You provide during the term of the membership and that You are responsible for updating your method of payment as necessary. In the case of invalid payment, Your Cue+ Membership will be suspended and You will be subject to a late payment charge of one and a half percent (1.5%) per month simple interest (or, if less, the maximum rate allowed by applicable law) from the due date until the date of payment. In case of continued non-payment, suspended Cue+ Memberships are at risk of being transferred to a third party collections agency, solely at Cue’s discretion. Please note that a third party collections agency may impose additional charges. Failure to pay may also result in Cue pursuing You legally to recover the value owed, thus incurring further legal costs for You. Unless you have disabled auto-renew or you have notified us of your cancellation by emailing [membership@cuehealth.com](mailto:membership@cuehealth.com) (effective at the end of the then-current term), your membership will automatically renew for an additional term equal to the length of the initial term.

**14. Termination.** Cue may terminate your access to all or any part of the Cue Products in the event of any breach of these Terms. In addition, Cue may choose to discontinue support of the Cue Products at any time, without notice. In such a case, the Cue Products may cease to function and your data that are stored on the cloud server may become inaccessible. You are solely responsible for saving locally any data stored in the Cue Health App. All provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

**15. Governing Law**

We make no representations that the content of the Cue Products are appropriate or may be used or downloaded outside the United States. Access to the Cue Products and/or the content may not be legal in certain countries outside the United States. If you access the Cue Products from outside the United States, you do so at your own risk and are responsible for compliance with the laws of the jurisdiction from which you access the website.

Any dispute with respect to the Cue Products shall be governed by the laws of California, excluding its conflicts of laws rules. You agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Diego, California, to resolve any dispute or claim arising from the Terms. We may seek injunctive or other equitable relief in any jurisdiction in order to protect our intellectual property rights.

YOU HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OF USE. YOU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE CUE PRODUCTS MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

16. **Modifications To These Terms.** We reserve the right to modify these Terms at any time, in our sole discretion, without prior notice to you, and your use of the Cue Products binds you to the use of the changes made. We do occasionally update these Terms, so please refer to them in the future. If you do not agree to the amended Terms, your sole and exclusive remedy is to cease use of the Cue Products. By continuing to access the Cue Products after the Terms have amended, you agree and consent to such amendments. Features and specifications of the Cue Products described or depicted herein are subject to change at any time without notice.
17. **General.** These Terms and any amendments thereof, shall constitute the entire agreement between You and Cue concerning use of the Cue Products. For the avoidance of doubt, in the event that an entity, such as You or Your partner, spouse, or parent's employer, university, or health plan (a "**Program Sponsor**") is paying for access to the Cue Products on your behalf and has a separate, written agreement with Cue directly related to Cue's provision of the Cue Products to you, that written agreement will govern and control in the event of any conflict with these Terms. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. No waiver of any term shall be deemed a further or continuing waiver of such term or any other term, and our failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

**18. Contact Us**

If you have any questions, concerns, or suggestions or otherwise need to contact us, please email us at support@cuehealth.com, call us at 833.CUE.TEST (833-283-8378), or mail us at Cue Health, Inc., 4980 Carroll Canyon Rd, #100, San Diego, CA 92121, Attn: Legal Department.

While we make every effort to respond to all correspondence within five (5) business days, we cannot guarantee a response to every communication.

Cue and Cue Health are registered trademarks of Cue Health, Inc. Apple and App Store are registered trademarks of Apple Inc., registered in the U.S. and other countries and regions. Google Play is a trademark of Google LLC. The Bluetooth® word mark and logos are registered trademarks owned by Bluetooth SIG, Inc. and any use of such marks by Cue is under license. Other trademarks and trade names are those of their respective owners.