

## CUE CARE™ TERMS OF USE

Updated: August 1, 2022

**CUE CARE SERVICES ARE NOT INTENDED FOR USE IN A MEDICAL EMERGENCY. IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, PLEASE DIAL 9-1-1 OR YOUR LOCAL EMERGENCY NUMBER IMMEDIATELY.**

Cue Care™ allows individuals to access telehealth services from third party medical groups, including but not limited to Wheel Medical, P.A. (collectively “**Medical Groups**”), through the Cue Health App and other operational and technology services (collectively, the “**Cue Care Services**”) provided by Cue Health Inc. (“**Cue**”, “**our**”, “**we**”, or “**us**”). Cue Care Services can only be provided to individuals who are physically located in the United States at the time they request and receive Cue Care Services through the Cue Health App.

These Cue Care Terms of Use supplement the terms and conditions set forth in the [Cue Health Terms of Use and End User License Agreement](#) (“**Cue Health Terms**”). Before using Cue Care Services, please read the Cue Health Terms, these Cue Care Terms of Use, and any other applicable rules, policies, and terms posted in the Cue Care Services (collectively, the “**Agreement**”), and the [Cue Health Privacy Policy](#). To the extent of a conflict between these Cue Care Terms of Use and the Cue Health Terms, these Cue Care Terms of Use will control with respect to the Cue Care Services.

**These Cue Care Terms of Use contain a mandatory arbitration provision that requires the use of arbitration on an individual basis (Section 14) and limit the remedies available to you in the event of certain disputes (Section 16).**

By using the Cue Care Services, you are agreeing, on behalf of yourself and your minor dependents, to be bound by the terms of the Agreement. If you do not agree to the terms of the Agreement, you may not use the Cue Care Services.

### 1. HEALTHCARE SERVICES

Medical Groups provide telehealth or other healthcare services through licensed providers who practice medicine and nursing (“**Providers**”). Each Provider is responsible for exercising their own professional judgment and complying with all requirements applicable to their profession and license.

If you receive telehealth or other healthcare services from Wheel Medical, P.A. and its affiliated Providers (“**Wheel Provider Group**”) through the Cue Care Services, you agree that your relationship to Wheel Provider Group is independent and is governed by [Wheel Provider Group’s Terms of Use](#).

### 2. IMPORTANT DISCLAIMERS

CUE DOES NOT PRACTICE MEDICINE OR NURSING OR OTHERWISE PROVIDE HEALTHCARE DIAGNOSIS OR TREATMENT SERVICES, AND DOES NOT INTERFERE WITH OR OTHERWISE INFLUENCE THE PROVIDER’S EXERCISE OF THEIR PROFESSIONAL JUDGMENT IN PROVIDING HEALTHCARE SERVICES.

THE INFORMATION AND OTHER CONTENT AVAILABLE ON OR THROUGH THE CUE CARE SERVICES IS FOR

INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. YOU SHOULD ALWAYS CONSULT WITH YOUR PROVIDER OR OTHER QUALIFIED HEALTHCARE PROFESSIONAL REGARDING QUESTIONS YOU HAVE ABOUT ANY HEALTH CONDITION BEFORE MAKING HEALTHCARE DECISIONS.

NEVER DELAY IN SEEKING PROFESSIONAL MEDICAL ADVICE OR DISREGARD SUCH ADVICE BECAUSE OF SOMETHING YOU HAVE READ ON THE CUE CARE SERVICES.

### **3. NOTICE REGARDING PROTECTED HEALTH INFORMATION**

Protected Health Information (“PHI”) is defined in the Health Insurance Portability and Accountability Act of 1996 (commonly referred to as HIPAA), and includes information such as a person’s medical history, diagnoses, treatments, current medical condition, and use of prescription medications. Medical Groups will collect or use your PHI to provide telehealth or other healthcare services. Cue is an operational and technology service provider to the Medical Groups, and will receive, use and disclose certain PHI to enable its provision of those services as a “Business Associate” (as defined by HIPAA) of the Medical Groups. When PHI is collected or used by a Medical Group (or is received, used or disclosed by Cue in its capacity as a Business Associate to a Medical Group) in connection with the Cue Care™ Services, it is governed by that Medical Group’s Notice of Privacy Practices and our agreement with that Medical Group, and not the Cue Health Privacy Policy.

Without limiting the generality of the foregoing, if you receive telehealth or other healthcare services from Wheel Provider Group, any PHI collected through the Cue Care Services by or on behalf of Wheel Provider Group is governed by, and will be used and disclosed solely as permitted under, Wheel Provider Group’s [Notice of Privacy Practices](#), as well as any business associate agreement between Wheel Provider Group and Cue, as required by law, to safeguard PHI. For more information about the privacy of PHI collected and maintained by or on behalf of Wheel Provider Group, please contact Wheel Provider Group or your Wheel Provider Group Provider.

### **4. NOTICE REGARDING OTHER PERSONAL INFORMATION**

The Cue Health Privacy Policy governs all information collected by Cue in connection with Cue Care Services that is not PHI (e.g., usage statistics, crash reports, time zone setting, device type, operating system associated with the mobile application, and other personal information not collected or used by a Medical Group (or by Cue acting in its capacity as a Business Associate of a Medical Group)).

### **5. CONSENT TO TELEHEALTH SERVICES**

Each Medical Group must obtain a patient’s consent in order to provide telehealth and other healthcare services. You will have the opportunity to review a Medical Group’s consent documentation prior to seeking telehealth or other healthcare services from that Medical Group. If you are seeking telehealth or other healthcare services on behalf of a dependent, you will have to consent on the dependent’s behalf. If you do not consent to a Medical Groups consent documentation, the Medical Group will not be able to provide telehealth or other healthcare services to you or your dependent.

If you receive telehealth services from Wheel Provider Group, you consent, on behalf of yourself and your minor dependents, to Wheel Provider Group’s [Telehealth Informed Consent](#).

## **6. ELIGIBILITY FOR CUE CARE™ SERVICES**

Cue Care Services are available to Cue Health App users and any profiles under a Cue Health App account. We may suspend your access to Cue Care Services in the event that you lose eligibility for Cue Care Services, but you may still access your PHI in accordance with a Medical Group's Notice of Privacy Practices.

## **7. TRIAL ACCESS AND PROMOTIONS**

Cue may offer trial access or other promotions to Cue Care Services to Cue Health App users in its sole discretion. If you are provided with promotional or trial access to Cue Care Services, your access is governed by these Cue Care Terms of Use and any additional terms presented to you with your promotion or trial access offer. At any time prior to or during your promotion or trial access period, Cue may, in its sole discretion, terminate your promotion or trial access without prior notice and without any liability to you, to the extent permitted under applicable law, for any reason, including to prevent abuse of the promotion or trial access.

## **8. AVAILABILITY OF CUE CARE SERVICES**

Certain Cue Care Services are currently available in a limited service area. You certify that you are physically located in the state you select through the Cue Care Services or otherwise confirm to us as your current location at the time of your telehealth visit with a Medical Group. Your ability to access and use the Services is conditioned on the truthfulness of this certification. The Providers that you access through the Cue Care Services rely upon this certification in order to interact with you. If your certification is inaccurate, you agree to indemnify us and the applicable Medical Group and Providers with whom you interact from any resulting losses, damages, costs, or expenses. You agree to refrain from using any technology or technique to obscure or disguise your location when using Cue Care Services.

## **9. PAYMENT FOR HEALTHCARE SERVICES**

You agree to pay all applicable charges at the prices then in effect for the Cue Care Services provided to you or your minor dependents. You will be charged for the Medical Group's telehealth services you receive through the Cue Care Services and any applicable delivery, technology or other fees associated with your use of the Cue Care Services. You authorize Cue to charge your chosen payment method (your "Payment Method") for the Cue Care Services provided to you or your minor dependent. If your Payment Method is invalid at the time payment is due, you agree to pay all amounts due upon demand. Cue reserves the right to correct any billing errors or mistakes even if payment has already been requested or received.

## **10. CHARGES FOR MISSED APPOINTMENTS**

You understand and agree that you are not entitled to a refund if you do not timely attend a telehealth visit you requested through the Cue Care Services. If you were unable to attend a telehealth visit due to extenuating circumstances, please contact [support@cue.me](mailto:support@cue.me).

## **11. COORDINATION AND PAYMENT FOR PRESCRIPTION MEDICATIONS**

A Provider may prescribe a medication if they determine it to be necessary to treat your or your dependent's condition. We will inform you through the Cue Care Services if the medication is available for pickup or delivery to your designated location from a third-party pharmacy ("Pharmacy") prior to your telehealth visit with a Provider. If you choose to pick up your prescription, you are responsible for picking up your prescription. If we inform you that pickup or delivery is unavailable from a Pharmacy prior to your telehealth visit and you choose to proceed with your telehealth visit anyway, you are responsible for all applicable charges.

If you provide us information about your health insurance, that will be deemed an authorization for a Pharmacy to submit claims for prescription medications to your health insurer or health plan. You understand and accept financial responsibility for any portion of the bill not covered by your health insurer or health plan, including any co-pay, co-insurance, deductible, or associated fees.

By using the Cue Care Services, you agree that Cue and a Medical Group may act as your agent to provide certain aspects of the services. For example, Cue or a Medical Group may assist in transmitting payment information to a third-party pharmacy or a third party that assists with prescription medication ordering, pickup and delivery. In doing so, neither Cue nor a Medical Group are undertaking any payment obligation on your behalf. You should direct all questions regarding your health plan coverage and related payment obligations to your health plan.

## **12. TERMINATION**

Your rights under this Agreement will automatically terminate without notice if you fail to comply with any of its terms. Further, Cue or you may terminate or suspend your access to and use of the Cue Care Services without notice, for any reason, at any time. In case of such termination, Cue may immediately revoke your access to Cue Care Services without refunding any fees. If your access to Cue Care Services is suspended or terminated, you may still access your PHI in accordance with a Medical Group's Notice of Privacy Practices. Cue's failure to insist upon or enforce your strict compliance with this Agreement will not constitute a waiver of any of its rights.

## **13. MINORS**

Minors under 18 years old can only access healthcare services if a profile exists for such minor child under a Cue Health App account and while such minor child is in the presence of an adult parent or guardian who has a Cue Health App account and the legal authority to consent to care on the minor's behalf.

## **14. MODIFICATIONS**

We reserve the right to make changes to or end the Cue Care Services at any time. We also reserve the right to make changes to the Agreement at any time. If we make material changes to these terms, we may take commercially reasonable steps to notify you. Your continued use of Cue Care Services following the posting of changes to the Agreement means that you continue to agree to the terms of the Agreement. If any of these terms is deemed invalid, void, or for any reason unenforceable, that term is deemed severable and shall not affect the validity and enforceability of any remaining terms.

## **15. DISPUTES/BINDING ARBITRATION**

**Any dispute or claim relating in any way to your use of the Cue Care™ Services will be resolved by binding arbitration, rather than in court**, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement.

**There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of these Cue Care Terms of Use as a court would.**

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to Cue Health, Inc., 4980 Carroll Canyon Rd, #100, San Diego, CA 92121, Attn: Legal Department. The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by this Section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. If you prevail on any claim that affords the prevailing party attorneys’ fees, the arbitrator may award reasonable fees to you under the standards for fee shifting provided by law.

**We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **we each waive any right to a jury trial.** We also both agree that you or we may bring suit in court to obtain an injunction, including an injunction for infringement or other misuse of intellectual property rights.

#### **16. DISCLAIMER OF LIABILITY FOR MEDICAL GROUP SERVICES**

MEDICAL GROUPS ARE THIRD-PARTY PROVIDERS OF HEALTHCARE SERVICES. CUE HAS NO RESPONSIBILITY OR LIABILITY FOR HEALTHCARE SERVICES PROVIDED BY A MEDICAL GROUP. EACH MEDICAL GROUP MAY CHANGE OR DISCONTINUE ITS HEALTHCARE SERVICES AT ANY TIME, AND CUE HAS NO OBLIGATION TO PROVIDE NOTICE TO YOU. CUE HEREBY DISCLAIMS ANY LIABILITY FOR ANY HEALTHCARE SERVICES PROVIDED BY A MEDICAL GROUP AND OBTAINED THROUGH THE CUE CARE SERVICES.

#### **17. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

CUE HEREBY DISCLAIMS ANY LIABILITY FOR UNAVAILABILITY OF CUE CARE SERVICES. WITHOUT LIMITING THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY TERMS IN THE CUE HEALTH TERMS, AND UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL CUE BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR OTHER SPECIAL CATEGORY OF DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF (OR INABILITY TO USE) THE CUE CARE SERVICES, EVEN IF AN AUTHORIZED REPRESENTATIVE OF CUE HAS BEEN ADVISED

OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, CUE'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATING TO YOUR USE OF THE CUE CARE SERVICES WILL NOT EXCEED THE GREATER OF (A) THE AMOUNT THAT YOU PAID TO CUE FOR THE CUE CARE SERVICES ON WHICH THIS DISPUTE IS BASED IN THE PAST SIX (6) MONTHS, OR (B) [\$75.00.

SOME JURISDICTIONS DO NOT ALLOW US TO EXCLUDE OR LIMIT OUR LIABILITY IN THE MANNER DESCRIBED ABOVE AND IT IS POSSIBLE THAT SUCH EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO OUR AGREEMENT WITH YOU. IN SUCH EVENT, THE LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.