

## CUE HEALTH MOBILE APPLICATION TERMS OF USE AND END USER LICENSE AGREEMENT

Welcome to the Cue Health Mobile Application (“Cue Health App”) by Cue Health Inc. (“Cue,” “our” “we” or “us”). These Terms of Use and End User License Agreement (collectively “Terms”) govern your license to use the Cue Health App (“License”) and your use of the Cue Health App (the “Services”).

Please read these Terms in full before using our Services. By using our Services, you agree to be legally bound by these Terms, any amendments of the Terms, and all applicable Cue rules and policies, including the Cue Privacy Policy. If you do not agree to these Terms, do not use the Services.

### The Services

The Cue Health App is used with the Cue Health Monitoring System (the “System”), which is a diagnostic device. The Cue Health App provides you with step-by-step instructions to collect specimens using a Cue Sample Wand, insert the Sample Wand into a disposable test cartridge, and run diagnostic tests for your health (collectively the “Cue Test”). When you run a Cue Test, the Cue Health App will display the results on your mobile smart device. The Cue Health App contains software regulated by the U.S. Food and Drug Administration (FDA) as a medical device for use by consumers and health care professionals.

These Terms apply to any content, materials, or Services accessible from or purchased within the Cue Health App, as well as upgrades that replace or supplement the original Cue Health App. We reserve the right to modify these Terms at any time without prior notice, and your use of the Services binds you to the use of the changes made. We do occasionally update these Terms, so please refer to them in the future.

### Access To Services

Our Services are available to you when installing the Cue Health App on a mobile smart device and registering for an account. When you 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 health care providers) and/or your 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.

### Your Account

FOR HEALTH CARE PROVIDERS, PLEASE READ:

The Cue Health App is designed to help you, but you should exercise your own clinical judgment when using our Services (content and tools). The content and tools provided by the Cue Health App do not constitute independent medical advice.

You agree to: (a) provide accurate and complete information when establishing your account and creating profiles (“Registration Information”) and (b) take all reasonable steps necessary to maintain and promptly update the Registration Information to ensure that it is accurate and complete. 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 Services, and you agree not to allow 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. 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.

## **Privacy**

We are committed to maintaining the privacy of your information. Please refer to our Privacy Policy, which is available by going to My Account (Legal) and viewing the Privacy Statement, for a full description of the information that we collect and how we use that information.

FOR HEALTH CARE PROVIDERS, PLEASE READ:

Health care providers represent and warrant that use of the Services will be used in compliance with all applicable laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) and other applicable federal and state privacy and data security laws.

## **Use Of Services**

As a user of the Cue Health App, you acknowledge that:

1. 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.
2. It is very important to read the User Manual and the Instructions for Use, which include the indications and contraindications for use of the Services.

You also represent that 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 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.

You agree that you will not use these products for any purposes prohibited by United States law.

## **License Grant**

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 this Agreement, 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 Services as described in these Terms. You may download the Cue Health App on your mobile smart device (e.g., Apple® iPhone®) and use the Services, as permitted by these Terms.

**Limitations On License.** The license granted to you in this Agreement is restricted as follows:

- **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.
- **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.
- **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.
- **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.
- **Proprietary Notices.** You may not remove any proprietary notices (e.g., copyright and trademark notices) from Cue Health App or its documentation.
- **Use In Accordance With Documentation.** All use of the Cue Health App must be in accordance with its then current documentation, if any, provided with the Cue Health App.
- **Confidentiality.** You must hold the Cue Health App and any related documentation in strict confidence.
- **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.

### **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 Services, including without limitation, the Cue Health App. Our Services 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 (™), 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 our Services are being used, or prohibited by these Terms. You agree not to use the Services 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 Services, or any contents of the Services. You may not attempt to gain access to any portion of the Services 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 only approved for use in the United States; it is not sold, licensed, or exported to users who reside outside the United States.

### **Services Availability**

We take all reasonable steps to ensure that our Services are 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 our Services are unavailable at any time.

While every effort is made to ensure that all content provided on the Services do 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 Services. While every effort is made to ensure smooth and continuous operation, we do not warrant the Services will operate error free.

### **Disclaimers**

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

FOR CONSUMERS, PLEASE READ:

IF YOU EXPERIENCE A MEDICAL EMERGENCY, STOP USING THE SERVICES AND CALL 911. YOU ACKNOWLEDGE THAT THE INFORMATION PROVIDED THROUGH OUR SERVICES IS 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.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CUE HEALTH APP AND ANY SERVICES 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 HEALTH APP AND ANY SERVICES, 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 MOBILE APPLICATION OR THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY THE MOBILE APPLICATION WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE MOBILE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE MOBILE APPLICATION WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CUE OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY. SHOULD THE CUE HEALTH APP OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. 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 our Services, 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 our Services; or, due to reliance upon information contained on or within our Services. You are solely responsible for verifying the accuracy of all personal information contained within the Services. 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 Services 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 diagnostic or therapeutic conclusions relying on erroneous data or data entry; (c) malfunction or loss of use of any hardware or software; (c) loss or degradation of communications between you, the Services, and/or Cue for any reason not within control of Cue; (e) personal injury; (f) your failure to correct erroneous data or to comply with proper instructions; and (g) errors resulting from unauthorized access to the Services.

### **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 SERVICES OR YOUR RELIANCE ON OR USE OF THE SERVICES, 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. 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). The foregoing limitations will apply even if the above stated remedy fails of its essential

purpose.

### **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 Services, 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 Services.

### **Third Party Content/Liability**

These Terms are only applicable to the use of our Services. The Cue Health App may enable access to third-party services and websites (“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 our Services 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 this agreement 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.

### **Termination**

Cue may terminate your access to all or any part of the Services in the event of any breach of these Terms. In addition, Cue may choose to discontinue support of the Services at any time, without notice. In such case, the Services 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.

### **Governing Law**

We make no representations that the content or the Services are appropriate or may be used or downloaded outside the United States. Access to the Services and/or the content may not be legal in certain countries outside the United States. If you access the Services 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 our Services 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 this Agreement. 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 IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OF USE AND/OR PRIVACY STATEMENT. YOU AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

### **General**

These Terms and any amendments thereof, any licensing agreements, together with applicable Cue policies and procedures, including the Privacy Policy and any legal notices that we publish regarding the Services shall constitute the entire agreement between us concerning use of the Services. 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.

### **Contact Us**

If you have any questions, concerns, or suggestions or otherwise need to contact us, please email us at [support@cuehealth.com](mailto:support@cuehealth.com) or call us at 833.CUE.TEST (833-283-8378).