

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

Updated June 30, 2021

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 (the “**Cue Products**”).

Please read these Terms in full before using the Cue Products. By using the Cue Products, 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 Cue Products.

## **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.

## **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) any and all applicable laws and regulations. The Cue Products that are governed by these Terms are described below:

- Cue COVID-19 Test (for professional or healthcare provider use). This Cue Product is regulated by Central Drugs Standard Control Organisation (CDSCO) as a medical device for use by accredited healthcare providers and operators. This Cue Product is also regulated by the U.S. Food and Drug Administration (“FDA”) as a medical device 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 the Cue Test authorizations can be found at [https://cuehealth.com/documentation/Cue\\_COVID-19\\_Test\\_Labeling/Cue\\_COVID-19\\_Test\\_FDA\\_EUA\\_Letter.pdf](https://cuehealth.com/documentation/Cue_COVID-19_Test_Labeling/Cue_COVID-19_Test_FDA_EUA_Letter.pdf).

This Cue Product includes the following:

- o **Cue Health Monitoring System:** Cue Cartridge Reader, Power Adapter, and Charging Cable

- **Cue COVID-19 Test Cartridge Pack:** single-use Cue COVID-19 Test Cartridge and single-use Cue Sample Wand
- **Cue Health Mobile App (“Cue Health App”):** available for download from the Apple® App Store® and Google Play™ Store onto a compatible smart device

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.

This Product has not been FDA cleared or approved; but has been authorized by the FDA under an Emergency Use Authorization (“EUA”). This Product has 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 this Product 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.

### **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 and agreed to 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 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. If you are under 18 years of age, 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.

### **Use Of the Cue Products**

As a user of the Cue Products, 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 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.
3. You will not use these products for any purposes prohibited by United States law.

### **Privacy**

We are committed to maintaining the privacy of any information that you elect to provide through the Cue Health App ("**Personal Information**"). Please refer to 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. Personal Information will be used by Cue solely in accordance with these Terms and the Privacy Policy.

### **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 and regulations, including applicable privacy and data security laws.

### **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 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 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.

**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 HealthApp 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, including user guides, which can be found within 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 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 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 is provided for use in the United States; India, and other jurisdictions where it is approved for use; it is not sold, licensed, or exported to users who reside outside of these jurisdictions.

### **Cue Products Availability**

We take all reasonable steps to ensure that the Cue Products 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 the Cue Products are unavailable at any time.

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

### **Disclaimers**

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

**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.

**FOR CONSUMERS, PLEASE READ:**

IF YOU EXPERIENCE A MEDICAL EMERGENCY, STOP USING THE CUE PRODUCTS AND CALL 112. 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.

**FOR ALL USERS, PLEASE READ:**

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. SHOULD THE CUE HEALTH APP 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 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.

### **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 THIS AGREEMENT, 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 USD \$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). 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 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.

### **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 (“**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 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 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 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.

### **Governing Law**

We make no representations that the content or the Cue Products are appropriate or may be used or downloaded outside the United States, India, or other jurisdictions where allowed. Access to the Cue Products and/or the content may not be legal in certain countries outside these jurisdictions. If you access the Cue Products from outside of the United States, India, or certain other jurisdictions where the Cue Products are allowed for use, 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 the State of California, United States, 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 OR TO PARTICIPATE IN ANY CLASS ACTION OR 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 CUE PRODUCTS 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 Cue Products shall constitute the entire agreement between us concerning use of the Cue Products. 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), call us at 833.CUE.TEST (833-283-8378), or by regular mail at CueHealth, Inc., 4980 Carroll Canyon Rd, #100, San Diego, CA 92121, Attn: Legal Department.

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