

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

Updated: December 13, 2022

Welcome to the Cue Health Terms of Use (“**Terms of Use**” or “**Cue Health Terms**”) 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 COVID-19 External Control Swabs**: positive and negative control swabs used to verify that the Cue Products are working properly and using the same procedure as that for a patient sample.

- **Cue COVID-19 Training Cartridges:** positive, negative, and invalid swabs for use in training and demonstrations.
- **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 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 access to and step-by-step instructions for additional optional features, including Cue’s Virtual Care Service, the Cue Supervised Test, and Cue Care™. The Cue Health App also includes features that allow uploading photographs of test results, insurance cards, identification cards, and more. These features may be updated or removed at Cue’s sole discretion.

(d) Cue+™ Membership (monthly subscription). This Cue Product allows individuals who purchase a monthly (30-day) membership and members of their household to receive discounted products from Cue and through the Cue Health App. As a Cue+ Member, you will receive a 20% discount on Cue Products and services (exclusions may apply). Subscriptions can be canceled at any time in the Cue Health App or by emailing [support@cue.me](mailto:support@cue.me).

(e) Cue+™ Annual Membership (annual membership not available to new members). This Cue Product allows individuals (“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.

(f) Cue Care™. This Cue Product allows eligible individuals to access telehealth services and same-day delivery of treatment, if prescribed, from third-party medical groups through the Cue Health App or other platforms if available, including but not limited to telephone or web applications, and other operational and technology services provided by Cue Health Inc. 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. Some exclusions apply. Cue is not affiliated with any pharmaceutical manufacturer. Each healthcare provider is responsible for exercising their own professional judgment in rendering services through Cue Care, including their professional decision to provide treatment or prescriptions. Please see the specific Cue Care terms at the end of this Terms of Use.

(g) Cue Virtual Care (Furnished by 98point6®). This Cue Product allows Cue+ Members to receive text-based 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 a U.S.-based, board-certified primary care physician affiliated with the telehealth service 98point6. The physicians are not employees or agents of Cue Health. 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 immediate family members under a Cue+ account. Cue reserves the right to limit access to this service if Cue determines, in its sole discretion, that this feature is abused. Please see the 98point6 [Terms of Use](#) and [Privacy Policy](#) for more information about the virtual care provided by 98point6.

- (h) Cue Supervised Test. This Cue Product allows Cue+ Complete Members to satisfy certain supervised or proctored testing requirements for travel, work, and more. This Cue Product requires a Cue Health Monitoring System (Cue Reader), 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 RDI Corporation or another third-party. 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. .

2. **FDA Authorization.** 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”) but have not been FDA cleared or approved. Such products have been authorized only for the detection of nucleic acid from SARS-CoV-2, not for any other viruses or pathogens. 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 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 every 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.

Cue may suspend or terminate your account immediately 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.

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, including when obtaining the results of a Cue Test. Cue is not responsible if you do not use the Cue Health App and a 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.

**HEALTH CARE PROVIDERS, HEALTH CARE PROFESSIONALS, OR COVERED ENTITIES PLEASE READ:** You represent and warrant that 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 (“**PHI**”) on behalf of Your Covered Entity 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 (“EPI”) that it creates, receives, maintains or transmits on behalf of Your Covered Entity. Cue shall comply with the HIPAA Security Rule with respect to EPI.
- 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 EPI 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 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 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 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 Health Inc. 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 A 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 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 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 misrepresentation or failure to correct erroneous data or to comply with proper instructions; (h) delay, failure, interruption, or corruption of

data, (i) errors resulting from unauthorized access to the Cue Products, and (j) any results from non-Cue test results used as a basis for Cue Care™ diagnosis, treatment, and prescriptions.

All [product disclaimers](#), hereby incorporated by reference, are available on the Cue Health website.

- (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 PROVIDERS OF TELEHEALTH SERVICES) SHALL BE LIABLE FOR ANY PROFESSIONAL ADVICE OR OTHER HEALTHCARE ITEMS AND SERVICES THAT YOU OBTAIN FROM A THIRD-PARTY, ANY AGENT OR CONTRACTOR OF A THIRD-PARTY OR A PHYSICIAN AFFILIATED WITH A THIRD-PARTY VIA THE TELEHEALTH SERVICES PROVIDED 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.

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 but not limited to RDI Corporation, OpenLoop Healthcare Partners, PC, Wheel Medical, P.A., ScriptDrop, PRN Software 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-labeled COVID-19 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. You must redeem this credit within ninety (90) days. Unredeemed credits expire ninety (90) days after the date of issuance. If Cue determines that a Cue account uses the “Rewards Center” excessively or otherwise abuses the credit feature, Cue reserves the right to deny You subsequent credits or deny access to the “Rewards Center.”
- (g) Cue+ Membership (monthly): The Cue+ Membership is a monthly (30-day) membership that offers members 20% off Cue Products and services; exclusions may apply. The Cue+ Membership is also subject to the following additional Terms:
- **Automatic Renewal:** You understand and agree that by placing an order for a Cue+ Membership, 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.
  - Payment for the monthly subscription is billed monthly (every 30 days) for the cost of the subscription. Once the Cue+ Membership begins, You may cancel the subscription anytime in the Cue Health App, or by emailing [support@cuehealth.com](mailto:support@cuehealth.com), and the cancellation will go into effect at the end of the current month. If You do not cancel during the month, the subscription will be renewed. For purposes of Cue+, “one month” is defined as thirty (30) calendar days.
  - 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, Cue reserves the right to transfer suspended Cue+ Memberships 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 in the Cue Health App, or by emailing [support@cuehealth.com](mailto:support@cuehealth.com), your membership will automatically renew for an additional month (30 days).
- (h) Cue+ Annual Memberships, including Cue+ Complete and Cue+ Essential (annual membership not available to new Cue+ Members): You understand and agree that Annual 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 and telehealth. 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 support@cue.me (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.

- (i) **Trial Access and Promotions:** Cue may offer trial access or other promotions of Cue Products in its sole discretion. If You are provided with promotional or trial access to Cue Care Services, your access is governed by these 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.

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 and the Cue Health App.

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](mailto: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 CARE™ TERMS OF USE**

Updated: December 13, 2022

**CUE CARE SERVICES ARE NOT INTENDED FOR USE IN A MEDICAL EMERGENCY. IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, PLEASE DIAL 911 OR YOUR LOCAL EMERGENCY NUMBER IMMEDIATELY.**

Cue Care™ allows individuals to access telehealth services and same-day delivery of treatment when available, if prescribed, from third-party medical groups, including but not limited to OpenLoop Healthcare Partners, PC and its affiliated providers (“**OpenLoop Provider Group**”) and Wheel Medical, P.A. and its affiliated providers (“**Wheel Provider Group**”)(collectively “**Medical Groups**”), through the Cue Health App, or other platforms if available, including but not limited to telephone or web application ,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.

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 15) and limit the remedies available to you in the event of certain disputes (Section 17).**

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, including their professional decision to provide treatment or prescriptions based on information provided to them by you, test results, or other information they use to render the healthcare services.

If you receive telehealth or other healthcare services from a Medical Group’s affiliated Providers through Cue Care Services, you agree that your relationship to OpenLoop Provider Group and/or Wheel Provider Group is independent and is governed by [OpenLoop Healthcare Partners’ Terms of Use](#) and/or [Wheel Provider Group’s Terms of Use](#).

By using the Cue Care Services, you understand that it is possible and likely that you may not encounter the same Provider and/or Medical Group for subsequent Cue Care telehealth visits.

In certain situations, you may qualify for a local, state, or federal government sponsored program that may cover all or a portion of your use of the Cue Care Services. Subject to the terms of any applicable written agreement between Cue and the government sponsor, you hereby authorize us to bill for the Services on your behalf and share necessary billing information with the government sponsor to process payments. If the government sponsor covers Cue Products and Services and makes payment to Cue for a given transaction, your payment obligation for such transaction will be reduced by the amount the government sponsor actually paid to Cue. You may be held responsible for any fees that the government sponsor does not cover.

## **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. CUE IS NOT AFFILIATED WITH ANY PHARMACEUTICAL MANUFACTURER.

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.

CUE DOES NOT REPRESENT THAT ANY TESTS RELIED UPON BY YOU OR THE PROVIDERS FOR TREATMENT, INCLUDING THIRD-PARTY TESTS DISTRIBUTED BY CUE, THAT ARE NOT CUE-BRANDED PRODUCTS ARE ACCURATE OR OF DIAGNOSTIC QUALITY. ANY RELIANCE ON NON-CUE PRODUCTS FOR DIAGNOSIS AND



TREATMENT ARE WITHIN THE DISCRETION AND PROFESSIONAL JUDGMENT OF THE HEALTHCARE PROVIDER.

### **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/or Privacy Policy 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.

Without limiting the generality of the foregoing, if you receive telehealth or other healthcare services from OpenLoop Provider Group, any PHI collected through the Cue Care Services by or on behalf of OpenLoop Provider Group is governed by, and will be used and disclosed solely as permitted under, [OpenLoop Privacy Policy](#), as well as any business associate agreement between OpenLoop 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 OpenLoop Provider Group, please contact [OpenLoop Provider Group](#) or your OpenLoop 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 Group’s 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](#). If you receive telehealth services from OpenLoop Provider Group, you consent, on behalf of yourself and your minor dependents, to the [Cue Care™ Telehealth Informed Consent](#), provided at the end of this document.

## **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 your Medical Group's privacy practices or privacy policy

## **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 AND DELIVERY**

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.

Same-day delivery for prescription orders received before 4pm Monday through Friday or 12pm Saturday through Sunday (local time zones). Orders placed after these times will be delivered the next day. Some exceptions may apply, depending on location and medication availability. Same-day delivery is not offered on the following holidays: Labor Day, Thanksgiving, Christmas Eve, Christmas Day, and New Year's Day.

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

Charges for Cue Care Services include the costs for an independent physician or nurse practitioner to review your information, communicate with You via a telehealth consultation through the Cue Health App, telephone, or web application, and determine your treatment options. Your payment may also include additional fees for other services such as delivery services and other administrative and operational support.

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. Charges for Cue Care Services are independent of any additional services and charges, such as the cost of prescriptions.

#### **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 AND HEALTHCARE SERVICES**

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, you authorize Cue and/or its subcontractors to validate your health plan coverage with third parties. If applicable, you also authorize a Medical Group, Provider or Pharmacy to submit claims for healthcare services or prescription medications to your health plan. You understand and accept financial responsibility for any portion of the bill not covered or reimbursed by your health plan, including any co-payment, 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. ACKNOWLEDGEMENT OF AUTHORIZATION TO BILL INSURANCE AND ASSIGNMENT OF BENEFITS**

By clicking "I agree", I authorize Cue Health Inc., OpenLoop Provider Group, and/or their partners to directly bill my insurance company, when applicable and if supported in my region, and I further authorize any third-party payer through which I have benefits to make payment directly to OpenLoop Provider Group. I understand that I am financially responsible for any balance. I also authorize Cue Health and/or its partners, OpenLoop Provider Group and/or its partners, or my insurance company to

use and disclose any healthcare information for the purpose of obtaining payment for Services and determining insurance benefits. Services provided by additional parties (i.e. lab, pathology, radiology) may be billed separately by those entities.

### **13. 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.

### **14. 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.

### **15. 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.

### **16. DISPUTES/BINDING ARBITRATION**

**Any dispute or claim relating in any way to your use of the Cue Care<sup>□</sup> 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.

**17. 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.

**18. 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.

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## Cue Care™ and Medical Groups Telehealth Informed Consent

This is a legal and binding document between you, and your medical provider group, Wheel Medical, P.A., a Florida professional association, on behalf of itself and its affiliated professional entities (collectively, “**Wheel Provider Group**” or “**Wheel**”) and/or OpenLoop Healthcare Partners, PC and affiliates (OpenLoop Healthcare Partners California, PC, OpenLoop Healthcare Partners Colorado, PC, OpenLoop Healthcare Partners New Jersey, PC, OpenLoop Healthcare Partners Wisconsin, SC) (collectively, “**OpenLoop Provider Group**” or “**OpenLoop**”) (Wheel Provider Group and OpenLoop Provider Group, collectively referred to as “**We**,” “**Our**,” or “**Us**”).

**Please read this carefully before clicking the checkbox indicating that you accept these terms.**

By clicking “I agree”, you hereby consent to receive health care services from licensed health care providers (“**Providers**”) contracted with either Wheel Provider Group (“**Wheel-affiliated Providers**”) or OpenLoop Provider Group (“**OpenLoop-affiliated Providers**”), who are located at sites remote from you, to provide consultative services to you. The receipt of health care services from a Wheel-affiliated Provider or an OpenLoop-affiliated Provider (the “**Services**”) is a type of “telemedicine” or “telehealth” service. The Providers will not be present in the room with you.

### **ACKNOWLEDGMENT**

By clicking “I agree”, you (a) further certify that you are the patient, or that you are duly authorized by the patient as the patient’s representative or legal guardian, (b) acknowledge and accept the risks identified above and the terms associated with the receipt of clinical services via the Services, and (c) give your informed consent to receive clinical services under the terms described herein.

### **Description of Services**

Providers may include behavioral health or primary care practitioners, nurse practitioners, physician’s assistants, specialists, and/or subspecialists. The name, credentials, and specialty or subspecialty of your licensed health care provider will be disclosed to you before, during, or after the Services are provided. In some cases, telemedicine visits may not be the most appropriate way for you to seek medical care and treatment. For example, certain medical conditions may require an in-person procedure, more urgent attention, or a health care provider other than your Provider using the Services.

- We may ask you a series of initial questions to help you determine whether a telemedicine visit is appropriate for you. Based on your responses to these questions, we may determine that a telemedicine visit may not be appropriate for the particular issue for which you are seeking a telemedicine visit or for other reasons related to your health status. In such a case: (i) you will receive an alert notifying you that you will be unable to use the Services for the particular issue you submitted; (ii) your request for a telemedicine visit will not be submitted to your Wheel-affiliated Provider or OpenLoop-affiliated Provider; (iii) your Provider will not receive any of the information that you submitted; and (iv) you will need to seek any needed care in another way.
- Your Provider may, following submission of a telemedicine visit request, determine that your diagnosis or treatment requires an in-person office visit or is otherwise not appropriately addressed through use of the Services. In such a case, your Provider may notify you that you will be unable to use the Services for the particular issue you submitted and provide additional information regarding next steps. Your Provider is solely responsible for providing you any such notification, whether through the Services or by some other means.

- We will use store-and-forward technology, audio-only consultations, and/or audio-video consultations to provide the Services. To ensure privacy and confidentiality of the Services, we use industry standard security measures. The Services may, but not necessarily will, result in a new prescription, refilling an existing prescription, patient education, non-prescriptive recommendations, or a recommendation to seek follow-up care in-person or through a different provider.
- A Provider may also perform Clinician Oversight for laboratory tests provided by third-party healthcare providers. Clinician Oversight involves ordering tests when appropriate, providing Patient Outreach when appropriate (defined below), and reviewing and releasing test results. Wheel and OpenLoop do not provide laboratory tests and are not responsible for the provision of laboratory tests or other services provided by third parties or through third-party websites. If you receive a laboratory test result with a value that is outside the normal range to a degree that may constitute an immediate health risk to you or require immediate action on the part of the ordering Wheel-affiliated Provider or OpenLoop-affiliated Provider (“**Critical Result**”) or below the established norms for a particular test, but not as urgent as a Critical Result (“**Abnormal Result**”), a Provider will reach out to you directly (“**Patient Outreach**”). The Wheel-affiliated Provider or OpenLoop-affiliated Provider will review for symptoms, educate you on the test results, and make recommendations for follow-up treatment.
- Wheel and OpenLoop will have no responsibility or liability for your Wheel-affiliated Provider’s or OpenLoop-affiliated Provider’s delay or failure to respond to a telemedicine visit request, to notify you that your telemedicine visit cannot be completed, or to provide you with next steps or follow-up information, or for any care, medical advice or treatment provided by your Provider.

### Treatment-Specific Consents

The following consents apply to patients accessing the Services for purposes of receiving Clinician Oversight or a telehealth consultation for a following treatment area:

- Human Immunodeficiency Virus (“**HIV**”) Testing
- What is HIV?
  - HIV is the virus that causes AIDS and can be transmitted through unprotected sex (vaginal, anal, or oral sex) with someone who has HIV; contact with blood as in sharing needles (piercing, tattooing, drug equipment); by HIV-infected pregnant women to their infants during pregnancy or delivery; or while breast feeding.
- How does the test work?
  - The HIV antibody test is a blood test. The test shows if you have antibodies to the virus that causes AIDS. A sample of your blood will be taken from your arm with a needle. If the first test shows that you have antibodies, a series of tests, including a different test, will then be done on the same blood sample to make sure the first test was right. A positive test result means that you have been exposed to the virus and are infected. It does not mean that you have AIDS, or that you will necessarily become sick with AIDS in the future. While HIV can lead to AIDS, this test does not say whether or not you have AIDS. A negative test means that you are probably not infected with the virus. It takes the body time to produce HIV antibodies. If you have been exposed to HIV recently, you need to be retested in several months to make sure you are not infected. Your doctor or counselor will explain this to you.
- Do I have to take this test?



- No. Taking an HIV test is completely voluntary. If you do not want to take the test, you may decline, and we will not perform the test.
- What does it mean if the test is negative?
  - A negative test means you're probably not infected with HIV. But it takes the body time to produce the HIV antibodies. It may just be too soon for the antibodies to be seen in the test. If you recently had sex without a condom or shared needles with someone who may be infected, you may want to be tested again in three to six months. Please talk to your doctor or HIV tester about this.
- What does it mean if the confirmatory test is positive?
  - A positive confirmatory test result means you are infected with HIV. It doesn't necessarily mean you have AIDS, but HIV is the virus that causes AIDS. It also means you could give the virus to other people. People who are infected can pass the virus during sex or by sharing needles during drug use. A pregnant woman who is infected can pass the virus to her baby during pregnancy or childbirth.
  - There is treatment for HIV that can help you stay healthy.
  - Individuals with HIV/AIDS can adopt safe practices to protect uninfected and infected people in their lives from becoming infected or being infected themselves with different strains of HIV.
- These Services are not provided on an anonymous basis, so please seek an anonymous test site if you prefer for your HIV test information and results to remain anonymous. This is a place where you can receive counseling and the HIV test without giving your name or address. You can find the nearest anonymous test site by contacting your local department of health.
- There are federal and state laws that protect the confidentiality of your HIV test results and related information. However, we may disclose your results as required by law for reporting to appropriate public health authorities.
- There are federal and state laws that prohibit discrimination based on your HIV status and there may be services available to help with such consequences.

### **Benefits and Risks to using the Services**

Your use of the Services may have the following possible benefits:

- Making it easier and more efficient for you to seek medical care and treatment for the conditions treated by the applicable health care provider;
- Allowing you to seek medical care and treatment by your Wheel-affiliated Provider or OpenLoop-affiliated Provider at times that are convenient for you; and
- Enabling you to communicate with your Wheel-affiliated Provider or OpenLoop-affiliated Provider without the necessity of an in-office appointment.

As with any medical procedure, there are potential risks associated with the use of telemedicine or telehealth services, which may include, without limitation, the following:

- The information transmitted to your Provider may not be sufficient (e.g., poor resolution of images) to allow your Provider to make an appropriate medical decision;
- Your Provider's inability to conduct certain tests or assess vital signs in-person may in some cases prevent the provider from providing a diagnosis or treatment or from identifying the need for emergency medical care or treatment for you;

- Your Provider may not be able to provide medical treatment for your particular condition and you may be required to seek alternative health care or emergency care services;
- Delays in medical evaluation/treatment or a failure to obtain needed treatment could occur due to unavailability of your Wheel-affiliated Provider or OpenLoop-affiliated Provider, deficiencies or failures of the technology or electronic equipment used, a transmission delay or failure, issues with the internet or other communications means, or for other reasons;
- The electronic systems, public networks, or security protocols or safeguards used in the Services could fail, causing a breach of privacy of your medical or other information;
- Your Wheel-affiliated Provider's or OpenLoop-affiliated Provider's diagnosis and treatment options, especially pertaining to certain prescriptions, may be limited;
- Lack of access to your medical records or ability to perform an in-person examination, which could result in negative health outcomes (e.g., adverse drug interactions, allergic reactions).

Either your Provider or you can discontinue the Telehealth Services if the technical connections are not adequate for the Services.

By clicking "I accept", you also represent and warrant the following:

- Your Provider has discussed the use of telemedicine services with you, including the benefits and risks of such use and alternatives to the use of the Services, and you have provided consent to your Wheel-affiliated Provider or OpenLoop-affiliated Provider for the use of the Services.
- You understand that you have the right to access your medical information created during use of the Services or to have the medical information forwarded to a third-party or alternative provider. Wheel and OpenLoop will not forward any personally identifiable information to third-parties or other providers without your written consent.
- You understand Wheel and OpenLoop may use third-party vendors to provide the Services.
- You understand that the use of the Services involves electronic communication of your personal medical information to your Wheel-affiliated Providers or OpenLoop-affiliated Providers who may be located in other areas, including outside of the state in which you reside, and that the electronic systems, public networks, or security protocols or safeguards used in the Services could fail, causing a breach of privacy of your medical or other information. You agree to hold Wheel and OpenLoop harmless for any information lost due to technical failures.
- You understand that, despite the privacy risks associated with the Services, all federal and state laws, rules, and regulations regarding privacy and confidentiality will apply to the Services, including HIPAA.
- You understand that it is your duty to provide your Wheel-affiliated Provider or OpenLoop-affiliated Provider truthful, accurate, and complete information, including all relevant information regarding care that you may have received or may be receiving from other health care providers or outside of the Services. You also understand that if you are uncomfortable with receiving the Services or the method in which the Services are provided, you should inform your Wheel-affiliated Provider or OpenLoop-affiliated Provider.
- You understand that your Provider may determine that your condition is not suitable for diagnosis or treatment using the Services, or may fail to respond promptly or ever to your request for a telemedicine service, and that you may need to seek medical care and treatment from your Provider, a specialist, or other health care provider outside of the Services.

- You understand that in the event of an emergency or an adverse reaction to treatment, you should dial 911 to receive appropriate follow-up care. In the event of technology failure or your Wheel-affiliated Provider or OpenLoop-affiliated Provider determining you need see another provider or make an in-person appointment, he or she will provide you with next steps or follow-up information.
- You understand the risks and benefits of the Services and its use in the medical care and treatment provided to you by your Wheel-affiliated Provider or OpenLoop-affiliated Provider. You also understand that you may refuse or withdraw from care at any time, and that your refusal or withdrawal will not affect your ability to receive care in the future.
- You understand that failure to comply with the terms of this document may result in the termination of your ability to use the Services.
- No potential benefits from the use of the Services, care provided via the Services, or specific results can be guaranteed. Your condition may not be cured or improved, and in some cases, may get worse. You understand that you could seek an in-office visit rather than obtain Services from a telehealth provider, and you are choosing to participate in Telehealth Services with your Wheel-affiliated Provider or OpenLoop-affiliated Provider.
- To protect the confidentiality of your health information, you agree to undertake your Services in a private location, and you understand that your Provider will similarly be in a private location.
- You understand that you are responsible for payment of any amounts due and owing resulting from your Services.

**Additional State-Specific Consents:**

The following consents apply to patients accessing the Services for the purposes of participating in a telehealth consultation within the states listed below, as required by state law:

Treatment Records: I understand that If I live in one of the following states, my primary care provider or other treating physician may obtain a copy of my telehealth treatment records with my consent, and Wheel or OpenLoop may securely send a copy of my telehealth treatment records to my primary care provider or other treating physician. If I need help sending my telehealth treatment records to my primary care provider, I can contact Wheel at [support@wheel.com](mailto:support@wheel.com), and I can contact OpenLoop via a web form at <https://openloophealth.com/contact>.

- Alaska: I understand that my primary care provider may obtain a copy of my records of my telehealth encounter.
- Connecticut: I understand that my primary care provider may obtain a copy of my records of my telehealth encounter.
- Kansas: I understand that if I have a primary care provider or other treating physician, the person providing telemedicine services must send a report to such primary care or other treating physician of the treatment and services rendered to me during the telemedicine encounter within three days of me providing consent to the person providing telemedicine services to send such report.
- New Hampshire: I understand that my primary care provider or treating provider may obtain a copy of my records of my telehealth encounter.
- New Jersey: I understand I have the right to request a copy of my medical information, and I understand my medical information may be forwarded directly to my primary care

- provider or health care provider of record, or upon my request, to other health care providers.
- Ohio: I understand that my primary care provider may obtain a copy of my records of my telehealth encounter.
  - South Carolina: I understand that my medical records may be distributed only with my consent and in accordance with applicable laws and regulations to other treating health care practitioners.
  - Texas: I understand that with my consent my medical records may be sent to my primary care physician within 72 hours after receiving Services.
  - Formal Complaints:
    - Iowa: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Idaho: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Indiana: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Kentucky: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Maine: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Oklahoma: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here; or, the Oklahoma Board of Osteopathic Examiners' website, here.
    - Rhode Island: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here.
    - Texas:
      - NOTICE CONCERNING COMPLAINTS - Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address: Texas Medical Board, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353, For more information, please visit our website at [www.tmb.state.tx.us](http://www.tmb.state.tx.us).
      - AVISO SOBRE LAS QUEJAS - Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos del Consejo Médico de Tejas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas: Texas Medical Board, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Si necesita ayuda para presentar una queja, llame al: 1-800-201-9353, Para obtener más información, visite nuestro sitio web en [www.tmb.state.tx.us](http://www.tmb.state.tx.us).
    - Vermont: I have been informed that if I want to register a formal complaint about a provider, I should visit the medical board's website, here; Or, the Vermont Board of Osteopathic Examiners' website, here.