

## Terms of Use

Effective: January 30, 2020

Last modified: January 30, 2020

These Terms of Use, together with the Privacy Policy, Acceptable Use Policy and any other documents they expressly incorporate, set forth the terms and conditions upon which you may access and use the health coaching services, mobile application and therapy or other related services provided or operated by Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture (collectively, the “Services”), including but not limited to any content and functionality offered through the Services. (“Terms of Use” or “Agreement”)

PLEASE READ THE TERMS OF USE CAREFULLY BEFORE YOU START TO USE THE SERVICES. THESE TERMS OF USE SET FORTH YOUR RIGHTS AND RESPONSIBILITIES CONCERNING THE SERVICES. THESE TERMS OF USE ALSO; (I) CONTAIN PROVISIONS THAT GOVERN HOW CLAIMS ARE RESOLVED, AND (II) AN AGREEMENT TO ARBITRATE, WHICH WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST US OR OUR AGENTS TO BINDING AND FINAL ARBITRATION. IF YOU DO NOT UNDERSTAND THESE TERMS OF USE OR DO NOT AGREE TO THESE TERMS OF USE DO NOT AGREE TO THESE TERMS OF USE OR OTHERWISE USE ANY SERVICES PROVIDED BY VIDA.

IN ORDER TO USE THE SERVICES, YOU MUST BE AT LEAST 13 YEARS OF AGE AND LOCATED IN THE UNITED STATES. BY USING THE SERVICES, YOU (or, if you are younger than the applicable age of majority, your parent/legal guardian) REPRESENT YOU; (I) ARE AT LEAST 13 YEARS OF AGE, AND (II) ARE LOCATED IN THE UNITED STATES. FURTHER, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THESE TERMS OF USE. IF YOU ARE NOT 13 YEARS OLD, OR IF YOU ARE LOCATED OUTSIDE OF THE UNITED STATES (IRRESPECTIVE OF YOUR AGE), YOU MUST NOT ACCESS OR USE THE SERVICES. If you are 13 or older, but under the age of 18 or other age of majority in your state of residence (in other words, you are considered a minor), your parent or legal guardian must agree to these Terms of Use on your behalf and you may only access and use the Services with permission from your parent or legal guardian.

IF YOU ARE A PARENT OR GUARDIAN ACCEPTING THESE TERMS ON BEHALF OF A MINOR YOU ALSO REPRESENT AND WARRANT THAT YOU HAVE READ AND AGREE TO THESE TERMS ON BEHALF OF THE MINOR AND ON YOUR OWN BEHALF. AS A PARENT OR GUARDIAN OF A MINOR USING THE SERVICES YOU ALSO ACKNOWLEDGE THAT YOUR ACCESS AND USE OF THE SERVICES ARE SUBJECT TO THIS AGREEMENT.

WE RESERVE THE RIGHT TO CHANGE, ADD OR REMOVE PORTIONS OF THESE TERMS OF USE, THE PRIVACY POLICY, AND ANY DOCUMENTS INCORPORATED HEREIN AT ANY TIME AND AT OUR SOLE DISCRETION. YOUR CONTINUED USE OF THE SERVICES FOLLOWING THE POSTING OF ANY CHANGES MEANS THAT YOU ACCEPT AND AGREE TO SUCH CHANGES. IT IS YOUR RESPONSIBILITY TO CHECK THESE TERMS OF USE PERIODICALLY FOR CHANGES.

Definitions.

“Acceptable Use Policy” means the Acceptable Use Policy attached hereto.

“Authorized User(s)”, “You”, “Your” means an individual who enters into this Agreement with Vida Health.

“Confidential Information” means information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (ii) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without access to the Disclosing Party’s Confidential Information.

“Content” means information either; (i) created by Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture and made available to Authorized Users through the Services, or (ii) obtained by Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture from publicly available sources or third-party content providers and made available to Authorized Users through the Services.

“Documentation” means any documentation (online or otherwise) made available by Company to You describing the Services or any support provided for the Services.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Services” means the Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture services that are ordered by You (or provided to You under a free trial), and made available online by Vida Health, including associated offline or mobile components, as described in the Documentation. “Services” exclude Content and Third-Party Technology. Services also include any onsite Services provided by Vida at the request of a Vida customer.

“Third-Party Technology” means; (i) a Web-based, mobile, offline or other software application, technology or functionality, or (ii) any third party device or product, that is made available to Authorized Users and interoperates with, or is used by an Authorized User in connection with a Service.

“Your (User) Data” means electronic data and information submitted by or for an Authorized User to the Services, excluding Content and Third-Party Applications. Your Data may include Protected Health Information (“PHI”) as defined under the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations implemented thereunder (collectively, “HIPAA”), or Personally Identifiable Information (“PII”) as defined under applicable laws and regulations concerning data privacy.

**Registration and Account Responsibility.**

Registration. Your health care provider, health plan, pharmacy benefit manager or employer will provide You with notification that You are eligible to participate in the Service as an “Authorized User”. To become an Authorized User You are required to register for the Services and provide

certain information about yourself. We will validate your entitlement to receive the Services and establish an Authorized User account on your behalf which You will thereafter use to access and use the Services. All information we collect about You in connection with the Services is subject to our then current Privacy Policy. We also track certain Authorized User interactions with the App. This includes; viewing a page, tapping a button, time spent on a page, time for a page to load and data entered into the App. You will provide Company with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of these Terms, which may result in immediate termination of your account. You shall not use a false name, e-mail address or phone number or otherwise enter information with the intent to impersonate another person. You warrant that all information You submit to us is true and correct. By using the Services, You consent to all actions taken by us with respect to Your information in compliance with the Privacy Policy, including being contacted via email, text message (SMS) or other electronic means.

Your Authorized User account may only be used for your personal use and will require a username and password. You are responsible for all activities that occur under Your account. You shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data You provide; (ii) maintain the confidentiality of your password and user account information; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services and notify the Company promptly of any such unauthorized use; and (iv) comply with all applicable local, state, and federal laws in using the Services.

General. Subject to the terms and conditions of this Agreement (including the Privacy Policy and Acceptable Use Policy), and during the term of this Agreement, Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture grants you a non-exclusive and non-transferable right to access and use the Services in accordance with the terms of this Agreement, and any Documentation made available to you by Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture solely for purposes of your personal use of the Services. The Services are limited to Authorized Users in the United States. The Services are enabled by technology, software and certain Content delivered electronically. Any use of the Service in breach of this Agreement, or that in our judgment threatens the security, integrity or availability of the Service, may result in immediate suspension of the Service, however we will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services are granted to you, and all such licenses and rights are hereby expressly reserved.

The Services have been designed by Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture with the purpose of assisting people achieve their health goals through healthy life-style choices and behavior. We encourage You to consult with Your healthcare provider before commencing the Services. You represent that You are in good enough health to begin these Services, which may include changes to Your diet or level of physical activity, among other things. The Services requires Your active engagement and participation. You understand that, despite Your efforts, individual users' results will vary for a variety of reasons and Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture cannot guarantee that You will achieve your health goals. Please note that interactions between an Authorized User and a health coach or therapist may be recorded. You will be asked to consent to such recording prior to a coaching session.

Health Coaches and Therapists. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture will match You with a health coach or therapist who will consult with You via telephone, video conference, chat, email or other online tools. We strive to maintain the client-health coach relationship throughout Your use of the Services but reserve the right to change Your health coach at any time. Our health coaches provide You with peer to peer support, encouragement, accountability and practical tips to help overcome barriers to meeting Your health goals.

FOR PURPOSES OF HEALTH COACHING SERVICES ONLY, IT IS IMPORTANT TO UNDERSTAND THAT THE SERVICES DO NOT INCLUDE THE PROVISION OF MEDICAL CARE BY THE COMPANY. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture COACHES ARE NOT ACTING IN A HEALTH CARE PROFESSIONAL CAPACITY. OUR HEALTH COACHES DO NOT PROVIDE ANY MEDICAL, CLINICAL SERVICES, AND DO NOT DIAGNOSE, TREAT OR MANAGE ANY ILLNESS, DISEASE OR CONDITION OR HOLD THEMSELVES OUT AS BEING ABLE TO DO SO. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture AND ITS HEALTH COACHES DO NOT HAVE EXPERTISE IN DIAGNOSING, EXAMINING, OR TREATING MEDICAL OR PSYCHOLOGICAL CONDITIONS OF ANY KIND, OR IN DETERMINING THE EFFECT OF ANY SPECIFIC EXERCISE ON A MEDICAL CONDITION. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture DOES UTILIZE LICENSED THERAPISTS WHICH MAY PROVIDE COGNITIVE BEHAVIORAL THERAPY. YOU SHOULD NOT CHANGE YOUR TREATMENT OR CARE PLAN, MEDICATION OR THERAPY BASED ON INFORMATION YOU RECEIVED THROUGH THE SERVICES OR FROM ONE OF OUR HEALTH COACHES OR THERAPISTS. CONSULTATION WITH OUR HEALTH COACHES IS SUPPLEMENTAL TO ANY TREATMENT OR CARE PROVIDED BY YOUR HEALTH CARE PROVIDER AND SHOULD NOT REPLACE REGULAR MEDICAL VISITS WITH YOUR HEALTH CARE PROVIDER. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PRACTITIONER REGARDING YOUR MEDICAL CONDITION OR THE USE (OR FREQUENCY) OF ANY MEDICATION OR MEDICAL DEVICE. INFORMATION PROVIDED BY OUR HEALTH COACHES OR THERAPISTS IS OFFERED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A RECOMMENDATION OR ENDORSEMENT OF ANY DRUG, DEVICE OR TREATMENT OR REPRESENTATION THAT A PARTICULAR DRUG, DEVICE OR TREATMENT IS SAFE, APPROPRIATE, OR EFFECTIVE FOR YOU. QUESTIONS REGARDING ANY DRUG, DEVICE OR TREATMENT ALWAYS SHOULD BE DIRECTED TO YOUR HEALTHCARE PROVIDER. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ IN CONNECTION WITH OUR SERVICES. ALWAYS CONSULT WITH YOUR HEALTHCARE PROFESSIONAL IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT YOUR HEALTH OR CONDITION OR EXPERIENCE ANY CHANGES IN YOUR CONDITION OR HEALTH STATUS. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture COACHES AND THERAPISTS ARE GENERALLY AVAILABLE 24/7 TO PROVIDE COACHING (E.G., ADVICE ON MEAL SELECTION WHILE AT A RESTAURANT), THEY DO NOT PROVIDE EMERGENCY SERVICES. PLEASE CONFIRM AVAILABILITY DIRECTLY WITH YOUR COACH. THE SERVICES DO NOT INCLUDE EMERGENCY, TIME SENSITIVE OR URGENT, REMOTE OR CRITICAL CARE SERVICES. IF YOU THINK YOU HAVE A MEDICAL EMERGENCY, CALL 911 OR GO TO THE NEAREST OPEN EMERGENCY ROOM IMMEDIATELY.

Term and Termination

The term of this Agreement will begin upon Your successful registration for the Services and will continue indefinitely unless terminated by either party as permitted herein.

You acknowledge and agree that the Company may suspend or terminate Your access to the Services if You (a) breach any term of this Agreement, or (b) engage in any conduct that the Company determines in its discretion may have an adverse effect on the Company or its reputation. The Company may also terminate Your access to the Services at any time for its convenience; and in such an event of a termination for convenience (but not upon a termination due to your breach of this Agreement), the Company shall refund any amounts prepaid by You for Services paid for but not received as of the date of termination for convenience.

If You were provided access to the Services as a result of participation in a health plan or because of an agreement between Vida and your employer or health care provider, termination of the agreement between Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture and the plan provider (or employer or health care provider if applicable) will also terminate Your right to use the Services unless you agree to assume financial responsibility for the Services and Company accepts such assumption. Upon termination, You will no longer have access to the Services or the health coaches, mobile application or other Content provided through the Services. In addition to termination, Company reserves the right to pursue any and all remedies available to it in the event of such a breach or conduct. Upon any termination, you will have the opportunity for a period of 90 days to retrieve any of Your data (and our obligations are only to use commercially reasonable efforts to retrieve such data, subject to any standard fees we may charge for our time in retrieving your specific data). To retrieve Your data please send an email to support@vida.com. We will store any PHI or PII as required by applicable law.

**Fees.** Services fees for the Term will be paid in accordance with your registration confirmation. You acknowledge that access to the Services may be suspended until payment is received in full. All Service Fees are exclusive of any tax, levy, or similar governmental charge that may be assessed. You are solely responsible for all taxes based upon the provision, sale or use of the Services, excluding any taxes based on the Company's net income.

**Patient Financial Responsibility/Payment Policy/Assignment of Benefits.** Generally, payment for Services is made by Your employer or health plan. Absent such payment You remain financially responsible for any Services provided. Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture will bill your insurance as a courtesy and make every effort to ensure claims are promptly and correctly submitted. In order for Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture to submit a claim, you must provide your current insurance card and complete billing information. You will be responsible for any deductible, co-insurance, co-pay or any service(s) deemed a "non-covered benefit" by your insurance carrier at the time the Services were rendered to you. For information on how Vida handles payment information please see our Privacy Policy.

**Intellectual Property Ownership.** Except for the limited license and use rights expressly granted to you under this Terms of Use during the Term, all title to and the rights in the Services, including any and all technology, software and content, including ownership rights to patents (registrations, renewals, and pending applications), copyrights, trademarks, trade secrets, the Company's or third party hardware, other technology, any derivatives of and all goodwill associated with the foregoing is the exclusive property of the Company and/or third parties. You grant Us a worldwide, perpetual, irrevocable, royalty-free license to use, modify and incorporate

into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You relating to the operation of the Services.

**Trademarks.** Trademarks, service marks, graphics, and logos used in connection with the Services are the trademarks of their respective owners. You are granted no right or license with respect to any of the trademarks mentioned above and any use of such trademarks. You acknowledge and agree that all text, graphics, photographs, trademarks, logos, visual interfaces, artwork, computer code and all other related content contained on the Services are owned by the Company or third parties and are protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws. Any reproduction, publication, further distribution or public exhibition of materials provided through the Services, in whole or in part, is strictly prohibited. Except as expressly provided in these Terms of Use, no part of the Services and no content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, distributed or transmitted in any way (including "mirroring") to any other computer, server, Services or other medium for publication or distribution or for any commercial enterprise, without the express prior written consent of the Company.

**Open Source.** The Service may contain certain applications and portions of applications which are provided under terms and conditions which are different from this Agreement (such as open source or community source), or which require us to provide You with certain notices and/or information ("Excluded Code"). We will identify such Excluded Code in a text file or about box or in a file or files referenced thereby (and shall include any associated license agreement, notices and other related information therein), or the Excluded Code will contain or be accompanied by its own license agreement. Your Use of the Excluded Code will be subject to the terms and conditions of such other license agreement solely to the extent such terms and conditions are inconsistent with the terms and conditions of this Agreement or are required by such other license agreement. By using or not uninstalling such Excluded Code after the initial installation of the Excluded Code You acknowledge and agree to all such license agreements, notices and information.

**Confidentiality.** By accessing the Services, you will have access to certain of our Confidential Information, including but not limited to methods, techniques, programs, devices and operations and any other information we designate as our Confidential Information. Your Confidential Information includes Your Data but does not include anonymized information (including, without limitation, PHI that has been de-identified in accordance with HIPAA requirements) collected from all users. Both parties' Confidential Information includes the terms and conditions of this Agreement. You and Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture each agree to: (i) only use Confidential Information as explicitly permitted in this Agreement; (ii) not disclose any Confidential Information of the Disclosing Party to any third party; and (iii) not disclose or use Confidential Information following the termination of the Service subscription, unless otherwise explicitly permitted herein (or in the Privacy Policy or, in the case of Vida, as permitted in a separate agreement with the employer, health plan or healthcare provider as applicable). Each party agrees to take reasonable efforts to protect the Disclosing Party's Confidential Information from disclosure to third parties, except as explicitly permitted herein, and apply measures consistent with those applied to the Receiving Party's protection of its own Confidential Information. Upon the Disclosing Party's request, at any time, the Receiving Party agrees that it will promptly return or destroy all of copies of Confidential Information to the Disclosing Party except for information periodically stored as part of a standard back-up

procedure. The Disclosing Party shall be entitled to injunctive relief in the event of any unauthorized use or disclosure, whether or not intentional, of its Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided that the Receiving Party notifies the Disclosing Party in advance of the compelled disclosure (to the extent legally permitted) and reasonable assistance in order to permit the Disclosing Party to contest such disclosure.

**Non-Confidential Information.** Subject to any applicable terms and conditions set forth in our Privacy Policy, any other communication or material that you send to us through the Services, such as any questions, comments, suggestions or the like, is and will be deemed to be non-confidential and We will have no obligation of any kind with respect to such information.

**Content.** The information presented on or through the Services is made available to you solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. The Services may provide information about health and wellness and certain health conditions. However, the Services should not be construed as providing any kind of medical advice or recommendation and should not be relied on as the basis for any clinical decision or action. Patients should not use the information contained on the Services for diagnosing a health problem or disease. Medical advice should always be sought from a licensed, qualified medical practitioner. We disclaim all liability and responsibility arising from any reliance placed on such materials by you.

**Service Access and Changes.** We reserve the right to withdraw or amend these Services or materials we provide in connection with the Services at any time in our sole discretion. We will not be liable if for any reason all or any part of the Services are unavailable at any time or for any period. From time to time, we may restrict access to some or all of the Services. We also may update the Services' Content from time to time. While we make reasonable efforts to maintain current information, we cannot guarantee that the Services' Content is complete or up-to-date.

**iOS App Users.** The following terms and conditions apply to you only if you are using the App from the Apple App Store. You, as an end-user of the App, acknowledge that this agreement is entered into by and between us and you and not with Apple, Inc., and Apple, Inc. is not responsible for the App and/or its content. Notwithstanding the foregoing, you acknowledge that Apple, Inc. and its subsidiaries are third-party beneficiaries of this Agreement and that Apple, Inc. has the right (and is deemed to have accepted the right) to enforce this Agreement. You acknowledge that Apple, Inc. has no obligation whatsoever to maintain or support the App. You acknowledge that you have reviewed the App Store Terms and Conditions (located online at <http://www.apple.com/legal/itunes/us/terms.html#APPS>). This Agreement incorporates by reference the Licensed Application End User License Agreement (the "LAEULA") published by Apple, Inc. (located online at <http://www.apple.com/legal/itunes/appstore/dev/stdeula/>). For purposes of this Agreement, the App is considered the "Licensed Application" as defined in the LAEULA and we are considered the "Application Provider" as defined in the LAEULA. If any terms of this Agreement conflict with the terms of the LAEULA, the terms of this agreement shall control. You further acknowledge and agree that in no event will Apple, Inc. be responsible for any claims relating to the App (including, without limitation, a third party claim that the App infringes that third party's intellectual property rights) or your use or possession of the App, including but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable

legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You acknowledge and agree that, to the maximum extent permitted by applicable law, Apple, Inc. will have no warranty obligation whatsoever with respect to the App.

**Third Party Links and Technology.** Any and all Third Party Technology or services provided, made available, linked to, or otherwise accessible through the Services is provided solely as a convenience to You and not under our control. The Company does not endorse, recommend, or otherwise make any representations or warranties with respect to any Third Party Technology. The Company does not have any responsibility or liability to You for any Third Party Technology which You access and use it at Your own risk. Further, You agree to comply with any and all terms and conditions applicable to the use of Third Party Technology and otherwise ensure that You have obtained all rights, licenses, and clearances that may be necessary to use such Third Party Technology. We encourage You to review the terms of use and privacy policies applicable to such Third Party Technology.

**Warranty and Remedy.** We warrant that the Services will substantially perform in accordance with the Documentation. We provide no warranty with respect to any Content. In the event of any breach of this warranty, (i) You must promptly notify us in writing, and (ii) Your sole remedy and our sole obligation shall be to refund any Fees paid by You (excluding any Fees paid on Your behalf) during the period of time the Services were not provided as warranted, up to a maximum of 6 months of Fees paid by You.

**DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE WARRANTY IMMEDIATELY ABOVE, Casey Potetz, The Medicinal Guide, or New Canaan Acupuncture MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, VIDA HEALTH; (1) DOES NOT WARRANT THAT ACCESS TO OR USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, AND (2) MAKES NO WARRANTY AS TO THE ACCURACY, INTEGRITY OR COMPLETENESS OF ANY CONTENT OR THAT CONTENT PROVIDED IS APPLICABLE TO, OR APPROPRIATE FOR YOUR PARTICULAR CONDITION OR USE OUTSIDE OF THE UNITED STATES. CONTENT AND THIRD PARTY TECHNOLOGY ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. Some states do not allow the exclusion or limitation of certain warranties, so the above limitation or exclusion may not apply to you.

**Limitation of Liability.** Except where prohibited by law, in no event will THE COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM YOUR USE OF OR INABILITY TO USE THE SERVICES, INCLUDING BUT NOT LIMITED TO RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM THE SERVICES. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY IN ANY ACTION, WHETHER IN CONTRACT, TORT OR ANY OTHER CLAIM, EVEN IF AN AUTHORIZED REPRESENTATIVE OF THE COMPANY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES. If, notwithstanding the other provisions of these Terms of Use, the Company is found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of the Services, the Company's liability will in no event exceed the amount of fees paid by you or your employer, health plan, pharmacy benefit manager or healthcare provider specifically in

connection with your use of the Services during the preceding twelve (12) month period. Some jurisdictions do not allow limitations of liability, so the foregoing limitation may not apply to you.

**Indemnity.** You agree to defend, indemnify, and hold the Company, its officers, directors, partners, employees, contractors, agents, licensors, and suppliers, harmless from and against any claims, actions or demands, liabilities and settlements including without limitation, reasonable legal and accounting fees, resulting from, or alleged to result from, (i) any claim by a third party that Your Data infringes any intellectual property rights of such third party, and (ii) any violation by You of applicable law, (iii) any Third Party Technology and (iv) your use of the Services in violation of these Terms of Use.

**Void Where Prohibited.** The Services are intended solely for users in the United States. The Services are not available to all persons or in all geographic locations. Any offer for any feature, product or service made on the Services is void where prohibited.

**Governing Law.** You agree that all matters relating to Your access to or use of the Services, including all disputes, will be governed by the laws of the United States and by the laws of the State of California without regard to its conflicts of laws provisions.

## DISPUTE RESOLUTION AND ARBITRATION

**PLEASE READ THIS CAREFULLY AS IT AFFECTS YOUR RIGHTS.** We want You to be happy with the Company's Services. If, for some reason, we cannot resolve any concern you may have with our Services to your satisfaction, You and the Company each agree to try to resolve those disputes in good faith after You provide written notice of the dispute as set forth below. If we cannot resolve the dispute, You and the Company agree that we will resolve the dispute through individual binding arbitration or small claims court, instead of courts of general jurisdiction.

**Arbitration And Waiver Of Class Action.** Instead of suing in court, You and the Company agree to arbitrate all Disputes (as defined below) on an individual, non-representative, basis. You agree that, by entering into this Agreement, You and the Company are waiving the right to a trial by jury or to participate in a class action or representative action. This agreement to arbitrate is intended to be broadly interpreted. In arbitration, there is no judge or jury. Instead, a neutral third-party arbitrator resolves Disputes in a less formal process than in court. In arbitration, there is limited discovery and a court review of the arbitrator's decision is limited. However, just as a court would, the arbitrator must follow the Terms of Use and can award damages and relief, including any attorneys' fees authorized by law.

**Opt-Out.** If you do not want to arbitrate Disputes with Company as set forth herein and you are an individual, you may opt out of this arbitration agreement by sending written notice to the following information within thirty (30) days of the date you first access or use the Services:

Casey Potetz

45 Grove St.

New Canaan, CT 06840

“Disputes” include, but are not limited to, any claims or controversies against each other in any way related to or arising out of our Services, these Terms of Use, or Acceptable Use Policy or our Privacy Policy, even if the claim arises after Services have terminated. Disputes also include, but are not limited to, claims that: (a) You or an authorized or unauthorized user of the Services bring against our employees, agents, affiliates, or other representatives; (b) You bring against a third party that are based on, relate to, or arise out of in any way our Services or these Terms of Use; or (c) that the Company brings against You. Disputes also include, but are not limited to, (i) claims in any way related to or arising out of any aspect of the relationship between You and the Company, whether based in contract, tort, statute, fraud, misrepresentation, advertising claims or any other legal theory; (ii) claims that arose before this agreement or out of a prior agreement with the Company; and/or (iii) claims that arise after the termination of these Terms of Use.

**Dispute Notice And Dispute Resolution Period.** Before initiating an arbitration or a small claims matter, you and the Company each agree to first provide to the other a written notice (“Notice of Dispute”), which shall contain: (a) a written description of the problem and relevant documents and supporting information; and (b) a statement of the specific relief sought. A Notice of Dispute to the Company should be sent to:

Casey Potetz

45 Grove St.

New Canaan, CT 06840

The Company will provide a Notice of Dispute to You by email to the address provided in Your user account.

The Company will provide You a designated representative to work with to try to resolve Your Dispute to Your satisfaction. You and the Company agree to make attempts to resolve the Dispute prior to commencing an arbitration or small claims action. If an agreement cannot be reached within forty-five (45) days of receipt of the Notice of Dispute, You or the Company may commence an arbitration proceeding or small claims action.

**Arbitration Terms, Process, Rules And Procedures.** (1) Unless You and the Company agree otherwise, the arbitration will be conducted by a single, neutral arbitrator and will take place in the county where the Services were provided. The arbitration will be governed by either: (a) rules that we mutually agree upon; or (b) the JAMS Comprehensive Arbitration Rules & Procedures (the “JAMS Rules”), as modified by this agreement to arbitrate, including the rules about the filing, administration, discovery and arbitrator fees. The JAMS rules are available on its website at [www.jamsadr.com](http://www.jamsadr.com). Notwithstanding any JAMS Rule to the contrary or any other provision in arbitration rules chosen, by agreement, to govern the arbitration, we each agree that all issues regarding the Dispute are delegated to the arbitrator to decide.

(2) The Federal Arbitration Act (“FAA”) applies to this Agreement and arbitration provision. We each agree that the FAA’s provisions—not state law—govern all questions of whether a Dispute is subject to arbitration. To the extent that this agreement to arbitrate conflicts with the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards for Procedural Fairness (the “Minimum Standards”), the Minimum Standards in that regard will

apply. However, nothing in this paragraph will require or allow You or the Company to arbitrate on a class-wide, representative or consolidated basis.

(3) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND THE COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A CLASS MEMBER IN ANY PUTATIVE CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both You and the Company expressly agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

(4) We each are responsible for our respective costs, including counsel, experts, and witnesses. The Company will pay for any filing or case management fees associated with the arbitration and the professional fees for the arbitrator's services.

(5) An arbitrator's award will be a written statement of the disposition of each claim and will also provide a concise written statement of the essential findings and conclusions which form the basis of the award. The arbitrator's decision and award is final and binding, with some limited court review under the FAA, and judgment on the award may be entered in any court with jurisdiction.

(6) As an alternative to arbitration, we may resolve Disputes in small claims court in the county where Services were provided. In addition, this arbitration agreement does not prevent you from bringing Your Dispute to the attention of any federal, state, or local government agency. Such agencies can, if the law allows, seek relief against the Company on your behalf.

The arbitrator will write an award explaining the decision and the findings and conclusions supporting it.

No Trial By Jury And No Class Action. IF FOR ANY REASON A CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY WAY PROCEEDS IN COURT RATHER THAN IN ARBITRATION, REGARDLESS OF WHETHER THE CLAIM IS AN ACTION, COUNTER-CLAIM OR ANY OTHER COURT PROCEEDING, WE EACH AGREE THAT TO THE EXTENT ALLOWED BY LAW, THERE WILL NOT BE A JURY TRIAL OR CLASS ACTION AND WE EACH UNCONDITIONALLY (1) WAIVE ANY RIGHT TO TRIAL BY JURY AND (2) WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASS WIDE BASIS, INCLUDING JOINING A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY OTHER PROCEEDING.

No Waiver. The failure of the Company to insist on or enforce strict performance of these Terms of Use will not be construed as a waiver by the Company of any provision or any right it has to enforce these Terms of Use, nor will any course of conduct between the Company and You or any other party be deemed to modify any provision of these Terms of Use.

Severability. The provisions of these Terms of Use are severable. The invalidity, in whole or in part, of any provision of these Terms of Use will not affect the validity or enforceability of any other of its provisions. If any of the provisions of these Terms of Use are held by a court or other

tribunal of competent jurisdiction to be void or unenforceable, such provisions will be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use will remain in full force and effect.

**Export Compliance.** The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not use the Service in violation of any U.S. export law or regulation.

**Assignment.** You shall not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without Vida Health's prior written consent and any attempt to do so shall be void.

**Entire Agreement.** These Terms of Use, along with the then current version of the Acceptable Use Policy and Privacy Policy, shall constitute the entire agreement and understanding between us concerning the subject matter hereof and supersedes all prior agreements and understanding of the parties with respect thereto. Except as provided herein, any attempt to modify or supplement these this Agreement shall be void unless agreed to in writing and signed by both parties.

**Contact Us.** You may contact us regarding the Services or these Terms of Use by mail at New Canaan Acupuncture, 45 Grove St. New Canaan, CT 06840