

# **NIU Health’s Terms & Conditions**

**Last Updated December 30, 2020**

These Terms and Conditions of Use (“Terms of Use”) govern your use of our online interfaces and properties (e.g., websites and mobile applications) owned and controlled by Hawaiki Telehealth, LLC d/b/a NIU Health (“NIU Health”), including the [www.niuhealth.com](http://www.niuhealth.com) website (the “Site”), various web based and mobile applications that require you to create an account in order to use NIU Health’s healthcare based services (the “Platform”) and the services available to users through the Site and/or Platform (“Services”), more specifically defined below.

The terms “you” and “your” means you, your dependent(s) if any, and any other individual accessing your NIU Health account.

The healthcare providers and professionals employed or contracted with NIU Health (individually, a “Provider,” and collectively, the “Providers”) provide both virtual, online and in person consultations to their patients. The professional medical services and non-clinical Site services provided by NIU Health are collectively referred to in these Terms of Use as “Services”.

**By using the Site, Platform, and/or Services, you expressly agree to these Terms of Use. Your acceptance of, and compliance with, these Terms of Use is a condition to your use of the Site, Platform, and/or Services. By clicking ‘I Agree and Consent’, you confirm that you have reviewed, understand, accept, and acknowledge all terms and conditions contained within these Terms of Use, the Notice of Privacy Practices, Consent to Telehealth, and our Privacy Policy. If you do not agree to be bound by these terms, you are not authorized to access or use this Site or Services; immediately exit this Site.**

**IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD DIAL “911” IMMEDIATELY.**

NIU Health’s Site, Platform, and/or Services are not for medical emergencies or urgent situations. You should not disregard or delay to seek medical advice based on anything that appears or does not appear on the Site and/or Platform. If you believe you have an emergency, call 9-1-1 immediately.

## **1. Ownership Of The Site And Related Materials**

All pages within this Site and any materials made available for downloading are the property of NIU Health, or its licensors or suppliers, as applicable. The Site is protected by United States and international copyright and trademark laws.

## **2. Privacy Practices**

You agree that information you provide in relation to the Site, Platform, and/or Services are subject to the NIU Health Privacy Policy, which is incorporated by and made part of this

Agreement. You further agree that information you provide in relation to the Services shall be governed by the NIU Health Notice of Privacy Practices, unless otherwise excluded under this Agreement or otherwise not conferred to a Provider by NIU Health, and is hereby incorporated and made part of this Agreement.

### **3. Electronic Communications**

When you use any of the Services, or send e-mails, text messages, and other communications from your desktop or mobile device to us, you are communicating with us electronically. You consent to receive communications from us electronically. You agree that (a) all agreements and consents can be signed electronically and (b) all notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such notices and other communications be in writing. NIU Health may contact you by email, mail, or telephone to verify your account information, and may request further information from you and you agree to provide such further information to ensure that you have not fraudulently created your account. If you do not provide the information requested by NIU Health within 7 days of the request, NIU Health reserves the right to deny, suspend, or discontinue your access to and use of the Site and Services until you provide the requested information.

### **4. Site Access, Security and Restrictions; Passwords**

If you create a subscriber account for the Site and/or Platform, you agree to complete the registration process by providing current, complete, and accurate information as required by NIU Health. You are responsible for all activities that occur under your account. In the event access to the Site or a portion thereof is limited requiring a user ID and password (“Protected Areas”), you agree to access Protected Areas using only your user ID and password as provided to you by NIU Health. You agree to protect the confidentiality of your user ID and password, and not to share or disclose your user ID or password to any third party. You agree that you are fully responsible for all activity occurring under your user ID. Your access to the Site and/or Platform may be revoked by NIU Health at any time with or without cause.

You are prohibited from violating or attempting to violate the security of the Site and/or Platform, including, without limitation, (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; or (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; or (c) accessing or using the Site and/or Platform or any portion thereof without authorization, in violation of these Terms of Use or in violation of applicable law. If you are under the age of 18, you may use the NIU Health Services only with the involvement and consent of a parent or guardian.

You may not use any scraper, crawler, spider, robot or other automated means of any kind to access or copy data on the Site and/or Platform, deep-link to any feature or content on the Site

and/or Platform, bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Site and/or Platform.

Violations of system or network security may result in civil or criminal liability. NIU Health will investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of this Site or any activity being conducted on this Site.

## **5. NIU Health's Role**

IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD DIAL "911" IMMEDIATELY.

NIU Health is not a insurance provider. NIU Health's role is limited to providing certain health related information available to you and/or facilitating your access to telemedicine and expert medical services.

NIU Health's Site, Platform, and Services are not for medical emergencies or urgent situations. You should not disregard or delay to seek medical advice based on anything that appears or does not appear on the Site and/or Platform. If you believe you have an emergency, call 9-1-1 immediately.

### **No Medical Care or Advice Through Use of the Public, Informational, and Community Based Portions of the Site and/or Platform**

ALL OF THE MATERIAL PROVIDED THROUGH THE PUBLIC, INFORMATIONAL AND COMMUNITY BASED PORTIONS OF THE SITE AND/OR PLATFORM, INCLUDING WITHOUT LIMITATION, TEXT, COPY, AUDIO, VIDEO, PHOTOGRAPHS, ILLUSTRATIONS, GRAPHICS AND OTHER VISUALS, ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT OR RECOMMENDATIONS OF ANY KIND.

YOU SHOULD ALWAYS SEEK THE ADVICE OF YOUR QUALIFIED HEATH CARE PROVIDER WITH ANY QUESTIONS OR CONCERNS YOU MAY HAVE REGARDING YOUR INDIVIDUAL NEEDS AND ANY MEDICAL CONDITIONS.

### **No Medical Care or Advice By NIU Health**

NIU Health offers an online communication platform for Providers and their patients to connect via the Site through the use of various telecommunications technologies. The Site and Platform facilitate communications between Providers and patients. NIU Health is independent from Providers who will be providing such telemedicine services to you through the Platform and is not responsible for such Provider's acts, omissions, or for any content of the communications made by them.

NIU Health does not provide medical advice or care. NIU Health contracts with other Providers who provide clinical telehealth and in person services. The Providers, and not NIU Health, are responsible for the quality and appropriateness of the care they provide to you.

The Providers contracted with NIU Health are using the Site and/or Platform as a way to communicate with you. Any information or advice you receive from a Provider comes from them alone, and not from NIU Health. Your communications and interactions with the Providers on the Site and/or Platform are not intended to replace your relationship with your regular health care practitioners or physicians. As such, you waive any and all claims related to medical treatment against NIU Health based on your use of the Site, Platform, and/or Services. Neither NIU Health, nor any of its subsidiaries or affiliates or any third party who may promote the Site, Platform, and/or Services or provide a link to the Site, Platform, and/or Services, shall be liable for any professional advice obtained from a Provider via the Site, Platform, and/or Services or for any other information obtained on the Site, Platform, and/or Services. NIU Health does not endorse any specific tests, physicians, medications, products or procedures that are recommended by Providers that may use NIU Health to communicate with you. You acknowledge that your reliance on any Providers or information provided by the Providers via the Site, Platform and/or Services is solely at your own risk and you assume full responsibility for all risk associated herewith.

NIU Health does not make any representations or warranties about the training or skill of any Providers who provide the Services.

The content of the Site, Platform, and/or Services, including without limitation, text, copy, audio, video, photographs, illustrations, graphics, and other visuals, is for information purposes only and does not constitute professional medical advice, diagnosis, treatment, or recommendations of any kind by NIU Health. You should always seek the advice of your qualified health care professionals with any questions or concerns you may have regarding your individual needs and any medical conditions. All information provided by NIU Health, or in connection with any communications supported by NIU Health, is intended to be for general information purposes only, and is in no way intended to create a provider-patient relationship as defined by state or federal law. While NIU Health facilitates your communications with Providers, NIU Health does not engage in the practice of medicine, and the doctor-patient relationship is between you and the Provider.

### **Risks of Telehealth Services**

Through your use of the Services, you acknowledge the potential risks associated with telehealth services. These include but are not limited to the following: delays in evaluation or treatment could occur due to electronic equipment failures; information transmitted may not be sufficient (e.g. poor resolution of images) to allow for appropriate medical or health care decisions by Provider; lack of access to medical records may result in adverse drug interactions or allergic reactions or other errors in judgment; although the electronic systems we use

incorporate network and software security protocols to protect the privacy and security of health information, those protocols could fail causing a breach of privacy of your health information.

## **6. Services/Products Purchase and Refund/Return Policy**

You may purchase services, medications, and products on the Site and/or Platform or at one of NIU Health's Health Hubs. We accept credit and debit cards issued by U.S. banks. If a credit card account is being used for a transaction, NIU Health may obtain preapproval for an amount up to the amount of payment. If you enroll to make recurring payments automatically, all charges and fees will be billed to the credit card you designate in the set-up process. If you want to designate a different credit card or if there is a change in your credit card, you must change your information online.

You represent and warrant that if you are making online payments that (i) any credit card, debit card and bank information you supply is true, correct, and complete, (ii) charges incurred by you will be honored by your credit/debit card company or bank, (iii) you will pay the charges you incur in the amounts posted, including applicable taxes, and (iv) you are the person whose name the card was issued and you authorized to make a purchase or other transaction with the relevant credit card and credit card information.

Once you make payment for services, medications, and/or products to NIU Health, you agree to NIU Health's no return and no refund policy. In the event a service, medication, or product is listed at an incorrect price due to a typographical error or error in pricing information received from a third party, NIU Health shall have the right to refuse or cancel any orders placed for the services, medication, or product listed at the incorrect price. NIU Health shall further have the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit or debit card charged. If your credit or debit card has already been charged for the purchase and your order is canceled, we will promptly issue a credit to your credit or debit card account in the amount of the charge.

## **7. License And Access**

Subject to your compliance with these Terms of Use and your payment of any applicable fees, NIU Health and/or its content providers grant you a revocable, limited, non-exclusive, non-transferable, non-sub-licensable license to access and make personal and non-commercial use of the Site, Platform, and/or Services. This license does not include any resale or commercial use of the Site, Platform, and/or Services or its contents; any collection and use of any service listings, descriptions, or prices; any derivative use of the Site, Platform, and/or Services or its contents; any downloading, copying, or other use of account information for the benefit of any third party; or any use of data mining, robots, or similar data gathering and extraction tools. All rights not expressly granted to you in these Terms of Use are reserved and retained by NIU Health or its licensors, suppliers, publishers, rights holders, or other content providers. The Site,

Platform, and/or Services may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of NIU Health. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of NIU Health without express written consent. You may not use any meta tags or any other “hidden text” utilizing NIU Health’s name or trademarks without the express written consent of NIU Health. You may not misuse the Site, Platform, and/or Services. You may use the Site, Platform, and/or Services only as permitted by law. The license granted by NIU Health terminates if you do not comply with these Terms of Use.

The Contents of the Site and Platform including without limitation the files, documents, text, photographs, images, audio, and video, and any materials accessed through or made available for use or download through this Site (“Content”) may not be copied, distributed, modified, reproduced, published or used, in whole or in part, except for purposes authorized or approved in writing by NIU Health. You may not frame or utilize framing techniques to enclose, or deep linking to, any name, trademarks, service marks, logo, Content or other proprietary information (including; images, text, page layout, or form) of NIU Health without our express written consent.

## **8. Accuracy and Integrity of Information**

Although NIU Health attempts to ensure the integrity and accurateness of the Site and Platform, it makes no representations, warranties or guarantees whatsoever as to the correctness or accuracy of the Site, Platform, and Content thereon. It is possible that the Site and/or Platform could include typographical errors, inaccuracies or other errors, and that unauthorized additions, deletions and alterations could be made to the Site and/or Platform by third parties. In the event that an inaccuracy arises, please inform NIU HEALTH so that it can be corrected. Information contained on the Site and/or Platform may be changed or updated without notice. Additionally, NIU Health shall have no responsibility or liability for information or Content posted to the Site and/or Platform from any non-NIU Health affiliated third party.

## **9. Links to Other Sites**

NIU Health makes no representations whatsoever about any other website that you may access through this Site and/or Platform. When you access a non-NIU Health site, please understand that it is independent from NIU Health, and that NIU Health has no control over the Content on that website. In addition, a link to a non-NIU Health website does not mean that NIU Health endorses or accepts any responsibility for the Content, or the use, of the linked site. It is up to you to take precautions to ensure that whatever you select for your use or download is free of such items as viruses, worms, Trojan horses, and other items of a destructive nature. If you decide to access any of the third-party sites linked to this Site, you do this entirely at your own risk.

## 10. User Information

If you submit, upload, post or transmit any health information, medical history, conditions, problems, symptoms, personal information, consent forms, agreements, requests, comments, ideas, suggestions, information, files, videos, images or other materials to us or our Site (“User Information”), you agree not to provide any User Information that (1) is false, inaccurate, defamatory, abusive, libelous, unlawful, obscene, threatening, harassing, fraudulent, pornographic, or harmful, or that could encourage criminal or unethical behavior, (2) violates or infringes the privacy, copyright, trademark, trade dress, trade secrets or intellectual property rights of any person or entity, or (3) contains or transmits a virus or any other harmful component. You agree not to contact other site users through unsolicited e-mail, telephone calls, mailings or any other method of communication. You represent and warrant to NIU Health and its Providers that you have the legal right and authorization to provide all User Information to NIU Health and its Providers for use as set forth herein and required by NIU Health and its Providers.

NIU Health may de-identify your information such that it is no longer considered protected health information or personally identifiable information. NIU Health may disclose, aggregate, sell, or otherwise use such de-identified information to third parties for analytics, research, or other purposes.

You Agree to defend, indemnify, and hold harmless NIU Health and its Providers from and against all third party claims, damages, expenses (including reasonable attorneys’ fees) against or incurred by us arising out of any User Information you upload to or transmit through the Site and/or Platform.

## 11. Claims of Copyright Infringement

We disclaim any responsibility or liability for copyrighted materials posted on our site. If you believe that your work has been copied in a manner that constitutes copyright infringement, please follow the procedures set forth below.

NIU Health respects the intellectual property rights of others and expects its users to do the same. In accordance with the Digital Millennium Copyright Act (“DMCA”), we will respond promptly to notices of alleged infringement that are reported to NIU Health’s Designated Copyright Agent, identified below.

### **Notices of Alleged Infringement for Content Made Available on the Site**

If you are a copyright owner, authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through our Site by sending us a notice (“Notice”) complying with the following requirements.

1. Identify the copyrighted works that you claim have been infringed.

2. Identify the material or link you claim is infringing (or the subject of infringing activity) and that access to which is to be disabled, including at a minimum, if applicable, the URL of the link shown on the Site where such material may be found.
3. Provide your mailing address, telephone number, and, if available, email address.
4. Include both of the following statements in the body of the Notice:

“I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use).”

“I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed.”
5. Provide your full legal name and your electronic or physical signature.  
Deliver this Notice, with all items completed, to [legal@niuhealth.com](mailto:legal@niuhealth.com).

## **12. Intellectual Property**

With the exception of your electronic medical records, NIU Health, as applicable, retains all right, title, and interest in and to the Site, Platform, and Services, and any information, products, documentation, software, or other materials on the Site and Platform, and any patent, copyright, trade secret, trademark, service mark, or other intellectual property, or proprietary right in any of the foregoing, except for information licensed by NIU Health. The information available through the Site, Platform, and Services is the property of NIU Health, as applicable. You agree not to store, reproduce, distribute, copy, modify, disseminate, loan, sell, rent, lease, publish, display, circulate, or broadcast such information to anyone. Use, reproduction, copying, or redistribution of NIU Health’s intellectual property including trademarks, service marks, and logos, are strictly prohibited without the prior written permission of NIU Health, as applicable. Nothing contained on the Site and Platform should be construed as granting, by implication, waiver, or otherwise, any license or right to use any trademarks, service marks, or logos displayed on the Site and/or Platform without the written grant thereof by NIU Health or the third party owner of such trademarks, service marks, and/or logos.

## **13. Disclaimer of Warranties**

NIU HEALTH DOES NOT WARRANT THAT ACCESS TO OR USE OF THE SITE AND/OR PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE SITE WILL BE CORRECTED. THE SITE AND/OR PLATFORM, INCLUDING ANY CONTENT OR INFORMATION CONTAINED WITHIN IT OR ANY SITE-RELATED SERVICE, IS PROVIDED “AS IS,” WITH ALL FAULTS, WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND TITLE/NON-



INFRINGEMENT. NIU HEALTH DOES NOT WARRANT THE ACCURACY, COMPLETENESS OR TIMELINESS OF THE INFORMATION OBTAINED THROUGH THE SITE AND/OR PLATFORM.

YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THIS SITE AND/OR PLATFORM, SITE AND/OR PLATFORM-RELATED SERVICES, AND LINKED WEBSITES. NIU HEALTH DOES NOT WARRANT THAT FILES AVAILABLE FOR DOWNLOAD WILL BE FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER DESTRUCTIVE PROGRAMMING. YOU ARE RESPONSIBLE FOR IMPLEMENTING PROCEDURES SUFFICIENT TO SATISFY YOUR NEEDS FOR DATA BACK UP AND SECURITY.

#### **14. Limitation of Liability Regarding Use of Site and Platform**

NIU HEALTH AND ANY THIRD PARTIES MENTIONED ON THIS SITE AND/OR PLATFORM ARE NEITHER RESPONSIBLE NOR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS, LOST DATA, OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATING IN ANY WAY TO THE SITE AND/OR PLATFORM, SITE AND/OR PLATFORM-RELATED SERVICES, CONTENT OR INFORMATION CONTAINED WITHIN THE SITE AND/OR PLATFORM, AND/OR ANY LINKED WEBSITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SITE, SITE-RELATED SERVICES, AND/OR LINKED WEBSITES IS TO STOP USING THE SITE AND/OR THOSE SERVICES. TO THE EXTENT ANY ASPECTS OF THE FOREGOING LIMITATIONS OF LIABILITY ARE NOT ENFORCEABLE, THE MAXIMUM LIABILITY OF NIU HEALTH TO YOU WITH RESPECT TO YOUR USE OF THIS SITE IS \$1000 (ONE THOUSAND DOLLARS). YOU AGREE TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL LAWS THAT LIMIT THE EFFICACY OF SUCH INDEMNIFICATIONS OR RELEASES.

#### **15. Disputes and Governing Law**

NIU Health will try work in good faith to resolve any issue you have with the Site and/or Platform, including services ordered or purchased through the Site, if you bring that issue to the attention of our customer service department. However, we realize that there may be rare cases where we may not be able to resolve an issue to a customer's satisfaction. If you or NIU Health has any dispute regarding these Terms of Use, including but not limited to any alleged breach of these Terms, the parties will submit the dispute(s) to binding arbitration in the State of Hawai'i before a single arbitrator in accordance with the rules of the American Arbitration Association. The arbitrator may, but does not have to, award legal fees, arbitrator's fees and costs and other costs incurred by the party that does not win the dispute(s). Any arbitration will be strictly confidential and neither party will disclose to any person (other than necessary to carry out the arbitration) the existence of the dispute(s) or any aspect of the dispute(s).

To the fullest extent permitted pursuant to applicable law, these Terms of Use are governed by the laws of the State of Hawaii without regard to conflict of laws principles. If a lawsuit or court proceeding is permitted under these Terms of Use, you and NIU Health agree to submit to the personal and exclusive jurisdiction of the State and Federal Courts within the jurisdiction of the City and County of Honolulu, State of Hawai'i for the purpose of litigating any dispute.

## **16. Force Majeure**

NIU Health will not be deemed to be in breach of these terms or liable for any breach of these Terms of Use or our Privacy Policy due to any event or occurrence beyond our reasonable control, including without limitation, acts of God, terrorism, war, invasion, failures of any public networks, electrical shortages, earthquakes or floods, civil disorder, strikes, fire or other disaster.

## **17. Indemnity**

You agree to defend, indemnify and hold NIU Health harmless from and against all third party claims, damages and expenses (including reasonable attorneys' fees) against or incurred by NIU Health arising out of your breach of these Terms of Use or violation of applicable law, or access by anyone accessing the Site and/or Platform and/or using your account user ID and password. Notwithstanding the foregoing or anything to the contrary herein, NIU Health shall only exercise its rights in this Section after addressing applicable claims with your employer or health plan should you be accessing the Site, Platform, and/or Services through your employer or health plan.

## **18. Right to Modify; Revisions; General**

NIU Health reserves the right to modify these Terms of Use at any time, effective upon posting. Any use of this website after such changes will be deemed an acceptance of those changes. You agree to review the Terms of Use each time you access this website so that you may be aware of any changes to these Terms. NIU Health uses Google Analytics, a third-party tracking service, which uses cookies to track non-personal identifiable information about our visitors to our main site in the aggregate to capture usage and volume statistics. NIU Health has no access to or control over these cookies. The companion Privacy Policy covers the use of cookies by NIU Health only and does not cover the use of cookies by any third-party. NIU Health reserves the right, in its sole discretion, to terminate your access to all or part of this Site, with or without cause, and with or without notice. In the event that any of the Terms of Use are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that these Terms of Use shall otherwise remain in full force and effect. These Terms of Use constitute the entire agreement between NIU Health and you pertaining to the subject matter hereof. In its sole discretion, NIU Health may from time-to-time revise these Terms of Use by updating this posting. You should, therefore, periodically visit this page to review the current Terms of Use, so you are aware of

any such revisions to which you are bound. Certain provisions of these Terms of Use may be superseded by expressly designated legal notices or terms located on particular pages within this Site.