

# DRAGONFLY MAX

Terms of Use  
Version 1.1.20.18

These terms and conditions of use (“Terms of Use”) govern your use of our mobile applications and websites owned and controlled by DragonFly Athletics (“DF”, “we” or “us”), including but not limited to the [www.dragonflymax.com](http://www.dragonflymax.com) website (the “Site”) and the services available to users through the Site and our mobile applications (collectively, the “Service” or “Services”). Compliance with these Terms of Use is a condition to the use of the Services. **BY CHOOSING TO ACCESS AND USE THE SITE, YOU ARE EXPRESSLY AGREEING TO BE LEGALLY BOUND BY THESE TERMS OF USE.** Our Privacy Policy provides additional information regarding our privacy practices and policies, including how we collect and handle personal health information and financial information.

The Terms of Use apply to all users, regardless of whether the user is: (i) an athlete, or parent/guardian of an athlete (“Athlete”), (ii) an athletic trainer, sports trainer, physical therapist, or other individual involved with the training or care of an Athlete (“Trainer”), or (iii) a representative of an Athlete’s or a Trainer’s school or other group, such as a coach, assistant coach, volunteer coach or administrator (“Representative”).

When an Athlete interacts with a Trainer or Representative, the information disclosed by the Athlete shall be subject to the privacy policy(ies) of the Trainer and/or the school or other group of the Representative, as applicable. Athletes, Trainers and Representatives shall comply in all respects with such privacy policy(ies).

DF does not provide any training or healthcare services, including but not limited to physical therapy and athletic training services. DF does not make any representations or warranties about the training or skill of any Trainer who may provide services in connection the Service or of any Athlete who may receive services in connection with the Service. All Trainers, Athletes and Representatives are independent of DF and use the Services as a way to communicate with other Trainers, Athletes and Representatives and to transmit and store information in a manner which each covenants shall be in compliance with applicable law and any privacy policy(ies) mentioned in the preceding paragraph. Interactions between Athletes and Trainers via the Service are not intended to take the place of the relationship with regular health care practitioners. Neither DF, nor any of its subsidiaries or affiliates or any third party who may promote the Service or provide a link to the Service, shall be liable for any professional or health care advice obtained from a Trainer in conjunction with the Service. DF does not endorse any specific tests, physical therapists, athletic trainers, medications, products or procedures that are recommended by Trainers who may use the Service. Further, you acknowledge that while DF may be providing services, the availability of its platform should not be construed as interpreting DF to be a “school official” as that term has been interpreted under the FERPA statute and implementing regulations. Therefore, the posting of information by you on DF’s platform to be accessed by other Athletes, Trainers or Representatives shall not be construed as subjecting DF

to the conditions and limitation of 34 C.F.R. §§ 99.31, 99.33, or other FERPA statutes or regulations.

You acknowledge that your reliance on any information provided by the Trainers, Athletes or Representatives via the Service is solely at your own risk and you assume full responsibility for all risk associated therewith.

**1. Electronic Communications.** When you use any DF Service, or send e-mails, text messages, and other communications from your desktop or mobile device to such a Service, you are communicating 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.

**2. Copyright and Trademark Laws.** Any material made available via the Service is the property of DF, or its licensors or suppliers, as applicable. The Services are protected by United States copyright and trademark laws. The Content (defined below) of the Services, including without limitation any files, documents, text, photographs, images, audio, and video, and any materials accessed through or made available for use or download through the Services (“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 DF. 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 DF without our express written consent.

**3. Site Access, Security and Passwords.** If you create an account for any Services, you agree to complete the registration process by providing current, complete, and accurate information as required by DF. You are responsible for all activities that occur under your account. In the event access to the Services 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 established by you for your account. 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 Services may be revoked by DF at any time with or without cause. You agree to defend, indemnify and hold DF, its affiliates, and the managers, members, officers, representatives, partners, licensors and agents of DF and its affiliates (the “DF Parties”) harmless from and against all third party claims, damages and expenses (including reasonable attorneys’ fees) against or incurred by the DF Parties due to, related to, or arising out of your breach of these Terms of Use or violation of applicable law, your use or access of the Services, or the use or access by anyone accessing the Services using your user ID and password or otherwise.

You are prohibited from violating or attempting to violate the security of the Services, including, without limitation: (a) accessing data not intended for you or logging onto a server or an account which you are 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 Services or any portion thereof without authorization, in violation of these Terms of Use or in violation of applicable law.

Violations of system or network security may result in civil or criminal liability. DF 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 Services or any activity being conducted on the Site.

**4. License and Access.** Subject to your compliance with these Terms of Use and your payment of any applicable fees related to your use of the Service, DF or its content providers, as applicable, grant you a limited, non-exclusive, non-transferable, and non-sublicensable license that relates solely to the use of the Services. You may not copy, reverse engineer, disassemble, attempt to derive or decode the source code, modify, or create imitative works of the Licensed Application or any part thereof. The terms of the license will govern any upgrades provided by DF that replace or supplement the original product, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern. The licenses granted by DF terminate automatically if you do not comply with these Terms of Use.

**5. No Medical Advice or Services.** No DF Party provides or intends to provide any medical advice, diagnosis, or recommendations of any kind related to the Services or the Site. At no time should any content or information transmitted to or from, or stored in, the Services or on the Site be interpreted as medical advice or a recommendation of any kind from a DF Party. Should you have any healthcare related questions, you must contact your physician or other appropriate healthcare provider promptly and in advance of your use of the Services or the Site. The Services and the Site should never be used in place of (a) the advice of a physician or other medical professional, (b) a visit, call or consultation with a physician or other medical professional, or (c) information contained on or in any product packaging or label.

**6. Electronic Payments.** Payment processing services for your account on DragonFly are provided by Stripe and are subject to the Stripe Connected Account Agreement (<https://stripe.com/us/connect-account/legal>), which includes the Stripe Terms of Service (<https://stripe.com/us/legal>) (collectively, the “Stripe Services Agreement”). By agreeing to use DragonFly, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of DragonFly enabling payment processing services through Stripe, you agree to provide DragonFly accurate and complete information about you and your business, and you authorize DragonFly to share it and transaction information related to your use of the payment processing services provided by Stripe to Stripe for fulfillment of Payment Duties.

**7. Covenant to DF with regard to Compliance with Laws.** The Services and the Site are only set up as a mobile platform for users to collaborate and communicate to the extent that such communications are made in a manner that is completely consistent with applicable law and, as such, you covenant to DF and the other DF Parties that you will only use the Services and the Site in a manner that is in compliance with applicable laws, including privacy laws such as the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and implementing regulations

(34 C.F.R. Part 99), as amended or otherwise modified from time to time (“FERPA”) and the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including, without limitation, the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Parts 160 to 164, each as amended from time to time, including as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009 and its implementing regulations (collectively, “HIPAA”). As such, you covenant to DF and the other DF Parties that no personally identifiable information from any Education Records (as defined below) will be placed on the Site or used in the Services by you, unless and until you have ensured that any such placement or use is expressly permitted by applicable law. To the extent you submit information directly to the website, you expressly acknowledge and consent that such information is being submitted freely and voluntarily, and you expressly consent to the disclosure of such information to DF and to such other users (e.g., Trainers, Representatives) as are consistent with the products and services offered by DF. As used above, “Education Records” has the meaning given to that term under FERPA. You further covenant to DF and the other DF Parties that no PHI (as defined below) will be placed on the Site or used in the Services by you. As used above, “PHI” means protected health information, as such term is defined under HIPAA and, specifically, in 45 CFR Part 160.103.

**8. No Warranty.** To the extent permitted by applicable law, the Services and the Site are provided **AS-IS** and as available with all faults and without warranty, express or implied, of any kind. DF does not warrant that the Services or the Site will meet your requirements or will be uninterrupted or error-free, or that defects in the Services or the Site will be corrected. You assume total risk in the use of the Services and the Site.

**9. 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 the Site or through our Services (“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. **All User Information that you submit is subject to our Privacy Policy, which is incorporated herein by this reference.** Interactions with a Trainer shall be subject to any separate privacy policy or notices of that Trainer. Whether you are a Trainer, Representative, or an Athlete, you represent and warrant to DF that you have the legal right, authorization, and necessary consents, as applicable, to provide all User Information to the Site and the participating Trainers, Representatives and other Athletes for use as set forth herein and permitted by these Terms of Use and applicable law.

**All Trainers, Representatives and Athletes represent and warrant that all User Information collected and obtained via the Service shall be kept confidential and shall only be disclosed to other parties outside the DF platform as authorized by law.**

**10. Indemnity. You agree to defend, indemnify and hold the DF Parties harmless from and against all third party claims or demands, damages and expenses (including reasonable**

**attorneys' fees) against or incurred by any DF Party(ies) related to or arising out of any User Information that you upload to or transmit through the Services and any other use of the Services.**

**11. Limitation of Liability.** To the fullest extent permitted by law, in no event shall any DF Party be responsible or liable to any person or entity, including you, for any direct, indirect, incidental, consequential, special, exemplary, punitive, or other losses, liabilities, costs, claims, expenses or 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 Services or the Site whether based on warranty, contract, tort (including negligence), or any other legal theory and whether or not advised of the possibility of such damages. DF is not a healthcare provider, and shall have no liability or responsibility for the acts or omissions of the Trainer(s) that you choose.

**12. Dispute Resolution.** In the event of any dispute or claim relating to the Site or these Terms of Use, you agree to resolution of such dispute in the state courts located in Tuscaloosa County, Alabama, and that the rights and obligations of the Parties will be governed by and in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles. You hereby waive any objection to venue and jurisdiction in such courts. Subject to any applicable limitation of liability set forth herein, the rights and remedies herein of DF are cumulative and in addition to any and all rights and remedies that may be provided by law or equity.

**13. Revisions / General.** DF reserves the right, in its sole discretion, to terminate your access to all or part of Services, 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 offending 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 so as to effect the intent of these Terms of Use, and the remainder of these Terms of Use shall continue in full force and effect. These Terms of Use constitute the entire agreement between DF and you pertaining to the subject matter hereof. In its sole discretion, DF may from time-to-time revise these Terms of Use by updating this posting.

# DRAGONFLYMAX

## Privacy Policy

DF understands the importance of privacy and is committed to maintaining the confidentiality of End User information (whether Athletes, Trainers, or Representatives). This Privacy Policy describes how information about may be used and disclosed via use of the Services. This Privacy Policy governs DF's use of the information which you provide to us. It does not govern the manner in which DF may use information DF has obtained from any other source, such as information obtained from a public record or from another person or entity. Read this entire Privacy Policy before using the Services. Capitalized terms not defined herein shall have those meanings set forth in our Terms of Use.

**1. Information Collection.** DF may collect information submitted by you during your use of the Services, such as information about an individual (e.g., name, address, email address, profile, etc.), about an injury report, specific treatment, or about you or your organization. DF may use such information for the purpose of operating the Services, analysis and improvement of Services, or analysis and improvement of customer support. During your use of the Services, DF may collect information you do not actively or intentionally submit, such as Internet Protocol (IP) Addresses, operating system type, and internet browser type. DF may use such information for the analysis and improvement of the Services. To the extent you submit information directly to the website, you expressly acknowledge and consent that such information is being submitted voluntarily, and you expressly consent to the disclosure of such information to DF and to such other users (e.g., Trainers, Representatives) as are consistent with the products and services offered by DF.

**2. Information Use.** The information DF collects is for DF's legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, DF will not release your information to nonaffiliated parties except:

(1) as necessary for us to provide the product or service you have requested of DF;

or

(2) as permitted or required by law.

DF may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis to the fullest extent permitted by law.

**3. Cookies.** Some parts of the websites use "cookies." Our websites may ask your web browser to store a small text file on your computer, which will then be sent back to our websites automatically each time you click on a new page on the websites. This enables us to provide you

with the best browsing experience possible. A cookie cannot be executed as code or deliver viruses. You can refuse the cookie or delete the cookie file from your computer by adjusting your web browser privacy settings or by other widely available methods. Please note that you may not be able to use certain features of the websites if your web browser does not accept cookies.

**4. Security.** DF has implemented and maintains appropriate restrictions, policies, procedures and other security measures to protect and limit access nonpublic personal information about users and past users of the Services and the Site, including limited DF's access to such information to those employees and contractors of DF who need to know that information in accordance with the business functions they are performing for you and DF. DF has implemented and maintains appropriate physical, electronic, administrative, and procedural safeguards to guard your nonpublic personal information. DF takes reasonable steps to protect all information submitted and stored through the Services or on the Site from loss, misuse, and unauthorized access, disclosure, alteration, and destruction. Sensitive information is encrypted at all times during transmission over the internet. As a condition of your use of the Services and the Site, you acknowledge and accept that, despite reasonable efforts of DF to secure information contained within the Services or on the Site, authorized parties may intercept such information transmitted through the use of the Services. Please be advised, however, that no security system is fail-safe and we cannot guarantee the information you provide will never be obtained by unauthorized persons

**5. Children's Online Privacy and Protection (COPPA).** THE WEB SITES DO NOT KNOWINGLY COLLECT PERSONAL INFORMATION FROM VISITORS UNDER AGE 13 AND ARE IN NO WAY DIRECTED AT CHILDREN UNDER THE AGE OF 13. IN THE EVENT THAT WE LEARN THAT WE HAVE COLLECTED PERSONAL INFORMATION FROM A CHILD UNDER AGE 13 WITHOUT PARENTAL CONSENT (OTHER THAN COLLECTION FOR THE SUPPORT OF INTERNAL OPERATIONS AS SET FORTH BELOW), WE WILL DELETE THAT INFORMATION AS QUICKLY AS POSSIBLE.

Except for automatic collection of users' IP addresses for the support of internal operations, we do not solicit or knowingly collect personal information from children under the age of 13. Parents/guardians, educators and other adult users may voluntarily submit inquiries to us in conjunction with DF. As a parent, you have the legal right to review and secure correction of personal information that we have obtained from your child under the age of 13. You also have the right to withdraw or limit your previous consent to our collection and use of the personal information of your child under the age of 13. In order to exercise these rights, parents should contact us by email at the contact information provided below. We will not release any personal information of children under the age of 13 to persons claiming to be those children's parents without verification that the child's parent is requesting the information. Additionally, minors may remove their own posts at any time.

**6. Changes to this Privacy Policy.** DF reserves the right to amend this Privacy Policy at any time in the future. Until such amendment is made, DF is required by law to comply with the terms of this Privacy Policy currently in effect. After an amendment is made, the revised Privacy Policy will apply to all information of the users of the Services or the Site that DF maintains,

regardless of when it was created or received. Notice of changes to this Privacy Policy will be made via posting the updated version on the website.

**7. Complaints and More Information.** DF will follow the rules as set forth in this Privacy Notice. If you want more information or if you believe your privacy rights have been violated, please contact us at:

Our Privacy Officer: Kirk Miller  
Office Address: P.O. Box 3172  
Tuscaloosa, AL 35403  
Office Phone: 256-270-1163  
Email Address: [Kirk@DragonFlyAthletics.com](mailto:Kirk@DragonFlyAthletics.com)