

DRAGONFLY

Terms of Use
Version 4.6.21

PLEASE READ CAREFULLY! BY AGREEING TO THIS DOCUMENT, YOU WILL WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE FOR DAMAGES.

These terms and conditions of use (“Terms of Use” or “Agreement”) 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 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, AND BY CLICKING “I AGREE,” 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 individuals and organizations with access to the Services (collectively, “User” or “Users”), regardless of whether the User is: (i) an athlete, or parent/guardian of an athlete (“Athlete”), (ii) an educational organization, including, but not limited to, a school, college, university, school district, high school athletic association, college athletic association, and conferences (“Organization”), (iii) a representative or agent of an Organization, including, but not limited to, a coach, assistant coach, trainer, volunteer coach, administrator, or auditor (“Representative”), or (iv) such other individual or organization with access to the Services, such as, but not limited to, tournament committees, church and community athletic leagues, and camps.

For purposes of this Agreement, the term “Data” shall include all Personally Identifiable Information (“PII”) and other non-public information, such as “Educational Records,” as defined under FERPA (20 U.S.C. §1232g *et seq.*). Data does not include de-identified data or information (“DII”). “DF” shall include DragonFly Athletics, its affiliates, subsidiaries, managers, members, officers, representatives, partners, shareholders, employees, agents, and attorneys.

When a User interacts with other Users, the Data or information disclosed by the User shall be subject to the privacy policy(ies) of the Users, as applicable, and this Agreement. All Users shall comply in all respects with such privacy policy(ies), relevant state and federal law, and this Agreement. **All Users are independent of DF and use the Services as a way to communicate with other Users and to transmit and store information in a manner which each covenants shall be in compliance with applicable law and any applicable privacy policy(ies).** 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, your choice to share information on DF’s platform to be accessed by other Users shall not be construed as subjecting DF to the conditions and limitations of 34 C.F.R. §§ 99.31, 99.33, or other FERPA statutes or regulations.

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 and other Users with whom you are registered or otherwise directly connected through or as a result of your interaction

with the Service. 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 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. “Content” includes, 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. 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 harmless from and against all third party claims, damages and expenses (including reasonable attorneys’ fees) against or incurred by DF 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. **If you are granted access to the Services as a Representative, an Organization, or as some other type of User other than an Athlete, your lawful access to the Services, whether your ID or password continue to provide you with access to the Services or not, terminates upon your resignation, termination, or separation from your organization.** Users shall prohibit former representatives, employees, agents, or volunteers from accessing the Service through the User’s account or with the User’s credentials.

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 any other agreement with DF, 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. DF provides no medical advice, diagnosis, or recommendations of any kind through 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 DF. 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. 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 or Representative who may provide services in connection with the Service or of any Athlete who may receive services in connection with the Service. **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 Representative in conjunction with the Service.** DF does not endorse any specific tests, physical therapists, athletic trainers, medications, products or procedures that are recommended by Representatives who may use the Service. **You acknowledge that your reliance on any information provided by Users via the Service is solely at your own risk and you assume full responsibility for all risk associated therewith.**

6. Electronic Payments. Payment processing services for your account on DragonFly are provided by Stripe and its successor 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 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”), 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”), and relevant state codes, regulations, ordinances, and common law. As such, you covenant to DF that no Data 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 Service, you expressly acknowledge and consent that such information is being submitted freely and voluntarily by you (or, by another User, when applicable) and you expressly consent to the disclosure of such information to DF and to certain Users (e.g., Organizations and Representatives) as are consistent with the products and services offered by DF.** You further covenant to DF that you will not place on the Site or use in the Services any protected health information, as such term is defined under HIPAA and, specifically, in 45 CFR Part 160.103. **Further, as this Agreement and relevant state and federal law require, you agree to protect the Data you may access through the Service, and agree that you shall not improperly share, use, disseminate, disclose, duplicate, preserve, sell, lease, or destroy any such information that you obtain through the Service, or share such information with a third party or User that you believe will use the information unlawfully or contrary to the terms of this Agreement.**

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. DF does not warrant to any User that any other User will abide by the terms of this Agreement. Further, DF does not warrant or guarantee that it will retain any User Information (as defined below) for any amount of time and expressly reserves the right to purge or destroy such information in accordance with state and federal law. **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, Data, 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 another User shall be subject to any separate privacy policy or notices of that User. Whether you are an Athlete, Organization, Representative, or other type of User, **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 Users for use as set forth herein and permitted by these Terms of Use and applicable law.**

All Users 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 after obtaining the appropriate consent and only as authorized by law. Organizations, Representatives, and other Users may not copy, use, transmit, sell, lease, share, or distribute any User Information for any reason other than those permitted under federal law (FERPA, HIPAA, etc.), relevant state laws, and this Agreement.

10. Background Checks. Background check services available in DragonFly are provided by a third party, Inflection Risk Solutions, LLC d/b/a GoodHire, You agree to the GoodHire's Terms of Use [<https://www.goodhire.com/terms>], Privacy Policy [<https://www.goodhire.com/privacy>], and Screening Policy [<https://www.goodhire.com/screening-policy>]. I have received the Notice to Users of Consumer Reports [https://app.goodhire.com/content/pdf/Notice_to_Users.pdf], the Summary of Rights under the Fair Credit Reporting Act [https://www.goodhire.com/hubfs/Goodhire-May2016/Pdf/CFPB_summary_of_rights.pdf?t=1518025771811], and I certify that I will only use GoodHire for the purpose of employment screening.

You appoint DragonFly as an agent for the limited scope of report procurement, and, if You so direct, the use of those employment screens to fulfill my employment purposes.

11. Indemnity. You agree to defend, indemnify and hold DF harmless from and against all third party claims or demands, damages, and expenses (including reasonable attorneys' fees) against or incurred by DF related to or arising out of your improper disclosure, transmission, duplication, or use of User Information, whether through the Services or otherwise.

12. Limitation of Liability. To the fullest extent permitted by law, you agree that in no event shall DF 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 any trainers or doctors that you choose. **You further understand and agree that DF shall not be responsible for any improper transmissions or receipt of User Information by any person or entity other than DF and you hereby waive, release, discharge, acquit, and hold DF harmless from any and all claims and demands of any nature related directly or indirectly to any unlawful or improper disclosure, dissemination, or destruction of Data that is maintained as a part of the Services.**

13. Dispute Resolution. You agree that any controversy or claim arising out of or relating to this Agreement or the breach thereof, or the Services, shall be settled by binding arbitration in Jefferson County, Alabama, using Alabama law, and in accordance with the rules of the American Arbitration Association, and judgment upon award rendered may be entered into any court having jurisdiction thereof. You acknowledge, understand, and agree that by consenting to binding arbitration, **YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY.** In the event that any portion of this arbitration provision is 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 this arbitration provision shall otherwise remain in full force and effect.

14. 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. DF may from time-to-time revise these Terms of Use, in which case the User will be provided with

the opportunity, upon logging into the User account, to review and consent to the updated terms. Alternatively, we may notify you by email in advance of such changes taking effect.