

TERMS AND CONDITIONS

Thank you for using the Atleto Dashboard. These terms and conditions (“T&Cs”), together with your Dashboard Access and Collegiate Services Agreement (the “Dashboard Agreement” and, together with the T&Cs, the “Agreement”) govern your use of the Dashboard. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Dashboard Agreement.

1. REQUIREMENTS AND CONDITIONS

- 1.1 Atleto agrees to provide access to the Dashboard to the University’s pre-approved users (“Users”) for the sole purpose of accessing the Dashboard pursuant to and in accordance with the terms and provisions of this Agreement, but does not make any representations as to the verification, credit worthiness, or qualification of any User.
- 1.2 The University is responsible for providing access and log-in credentials to all Users, and for managing any access log-in databases required to ensure continued access to its authorized Users. The University is responsible for ensuring that access to the Dashboard is only granted to Users which are authorized by the University for such access, and for safeguarding all access login credentials for the Dashboard
- 1.3 The University agrees to to fully support the promotion of the Atleto social sports network application for mobile devices App during the Term, including, without limitation, during the initial roll out of the App to all students at the University, promotion during orientation week, use of banners and video tools.
- 1.4 The University acknowledges that Atleto is only a conduit for the transaction between the University and Athletes using the App, and has no liability whatsoever for such transactions, or any claims arising therefrom, including with respect to any content of the University displayed on the App. Without limiting the generality of the foregoing, Atleto is not responsible for any disputes between the University or the Athletes, for resolution of same, or for the consequences of any chargebacks, refunds due to an Athlete, or credit card or other type of fraud, misuse or abuse on or related to use of the App. Atleto is not responsible for any delivery failures, misdeliveries, nondeliveries, theft, mistake or action in connection with fulfillment of any orders placed on the Site. Atleto is not responsible for any misinformation, personal injuries, property damage, recalls, product defects, or other nonconformities associated with the goods and services sold through the App. All liability with respect to any of the foregoing shall be borne by the University to the extent such services or goods are part of the Athletic Programs.
- 1.5 The University acknowledges and agrees that Atleto has no control over the quality, safety, or legality of the Athletic programs, products or services offered as part of, or in connection with, the Athletic Programs that are available through the App.
- 1.6 The University acknowledges and agrees that (i) Atleto has no independent knowledge of persons that are eligible to access the University Group, (ii) access to the University Group will be based on information provided by the Athlete (*e.g.*, student email address) and Atleto has no means of authenticating such information and (iii) Atleto is solely relying on the University to identify Athletes that should not have access to the University Group (*e.g.*, non-matriculated students or ex-staff).

- 1.7 The use of the App by the Athletes is exclusive from the services provided by Atleto hereunder and all services provided by the App to the Athletes are subject to the terms and conditions and policies set forth on the App, which may be revised by Atleto from time to time in its sole discretion.
 - 1.8 The University must provide in a timely manner all materials and information required for Atleto to perform its obligations hereunder.
 - 1.9 The University must comply with all requirements for its access to, and use of the Site.
 - 1.10 The University shall be responsible for making, at its own expense, any changes or additions to its systems, software, and hardware that may be required to support its access and use of the Site.
 - 1.11 The University acknowledges and agrees that Athletes' access and use of the App is exclusively governed by the terms and conditions and other policies set forth on the App and that except for the University, no rights are granted hereunder to the Athletes or any other person regarding use of the App.
2. **PROHIBITIONS.** The University hereby acknowledges and agrees that, at all times during the Term, it:
- 2.1 Shall not utilize the Dashboard or any portion(s) thereof, for any purpose which is contrary to the laws of any government or governmental entity having jurisdiction over Atleto or the University.
 - 2.2 Shall refrain from using the services or the Dashboard in a manner that is libelous, defamatory, obscene, infringing or illegal, otherwise abusing the services or the Dashboard, interfering with the usage of Atleto's services or other sites hosted by it for other customers, or knowingly transmitting to Atleto or others through the Dashboard or through any other means of data transmission any harmful computer code or virus.
 - 2.3 Shall not copy, reproduce, display or distribute any Specifications (as defined below) or documentation made available by Atleto with respect to the Dashboard or the App, except to those employees of the University who have a need to know the information contained therein for purposes of conducting the University's obligations hereunder; provided, however, this prohibition shall not apply to Athletic Data.
 - 2.4 May not attempt to access, and may not allow any third parties to access, Atleto's or its service providers' environments or systems, other than those made available to the University by Atleto for use of the Dashboard consistent with the provisions of this Agreement.
 - 2.5 Shall not attempt to access or obtain the object code, or to decompile, disassemble, or otherwise obtain the source code, of or to the software used to create, or make accessible, the Dashboard or the App, and shall not allow or enable any third parties to do any of the foregoing.
 - 2.6 Atleto is only responsible for facilitating the University's access to the Dashboard through the Website. Using the Dashboard for transactions of any other types of goods or services is prohibited.
 - 2.7 Unless Atleto explicitly agrees otherwise in writing, the University may not use any automated means (such as scripts, bots or crawlers) to access the Dashboard or collect information from it.

3. **ACCEPTANCE**

- 3.1 Atleto will design the Dashboard pursuant to the specifications set forth in Schedule IV hereto (the “Specifications”) and grant such access to the Website as is necessary for the University to populate the University Group on or before the go-live date. Except as otherwise mutually agreed to by the parties hereto, the University shall have ten (10) days to review and evaluate the Dashboard after receiving notification from Atleto that the Dashboard is ready for acceptance testing. If the University fails to provide written notice to Atleto rejecting the Dashboard within such ten (10) period, the Dashboard shall be deemed accepted.
- 3.2 If the Dashboard, as initially delivered, does not meet the Specifications in all material respects, the University may reject by providing written notice to Atleto setting forth in reasonable detail the reasons for its rejection, including all reasonable documentation evidencing nonconformities. Atleto shall have an additional thirty (30) days to correct any identified deficiencies which are documented by the University, and will resubmit the Dashboard to the University for acceptance testing on or before such time as lapsed. The University shall have an additional ten (10) day period to perform acceptance testing of the re-delivered Dashboard, and accept or reject pursuant to the provisions set forth earlier in this Section. If the Dashboard does not pass acceptance testing during such period, the University shall have the right to terminate this Agreement and receive back from Atleto a refund of the amounts paid on account of the work.
- 3.3 Promptly after acceptance, the Dashboard shall be made available to the University and the Users in accordance for use hereunder.

4. **CONFIDENTIAL INFORMATION**

- 4.1 Throughout the Term of this Agreement, each party may receive information that the other party (the “Disclosing Party”) considers confidential or proprietary (the “Confidential Information”). In the case of Atleto, such Confidential Information includes, without limitation, business plans, methodologies, software, computer systems, records, technical processes, product designs, usage rates, projections, marketing data and memoranda, and technology and all information and data collected by or documentation related to, the App, the Website or the Dashboard. The University acknowledges and agrees that the pricing of Atleto’s services and any and all amounts paid to Atleto in connection with this Agreement, or in connection with the Athlete’s use of the App, is considered Confidential Information. However, Confidential Information shall not include information that either party can demonstrate: (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party; (b) was known to the receiving party as of the time of its disclosure; (c) is independently developed by the receiving party; or (d) is subsequently learned from a third party not under a confidentiality obligation to the Disclosing Party.
- 4.2 Each party agrees to safeguard the Confidential Information of the Disclosing Party using at least the same degree of care as it uses to safeguard its own Confidential Information (but in no event less than a reasonable degree of care). The University acknowledges and agrees that the pricing of Atleto’s services and any and all amounts paid to Atleto in connection with this Agreement, or in connection with the Athlete’s use of the App, shall not be disclosed without Atleto’s prior written consent.

- 4.3 If a party comes under order to supply Confidential Information of the Disclosing Party by operation of law, or pursuant to a court order or subpoena, such party shall promptly notify the Disclosing Party, shall exercise reasonable efforts to prevent such disclosure, shall, at the Disclosing Party's cost and expense, reasonably cooperate with the Disclosing Party in any attempt to avoid or mitigate such disclosure.
- 4.4 The parties agree that disclosure of Confidential Information of either party may cause irreparable injury inadequately compensable in damages at law, and therefore agree, that without prejudice to any other remedies at law or equity or under this Agreement, such Disclosing Party is entitled to seek injunctive relief in an attempt to avoid such disclosure without the obligation to post a bond as a condition thereof.

5. **INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The University hereby acknowledges and agrees that it only obtains the right to access, and to grant access to its authorized Users to, the Website and the Dashboard, and that it obtains no further right, title or interest in the App, the Website or the Dashboard, or any content, software, technology, or other intellectual property embodied in, comprising, or contained within, the App, the Website or the Dashboard (except for the Athletic Data and any University owned pre-existing intellectual property as set forth in Section 5.3), all of which is Atleto's intellectual property, including all copyrights and patents used in or with, required for the use, development, maintenance, access, display, distribution, or copying of the App, the Website or the Dashboard.
- 5.2 For the avoidance of doubt, all materials, including, but not limited to, software, programs, source code and object code, including all interfaces, navigational devices, menus, menu structures or arrangements, icons, help and other operational instructions text, graphics, audio or comments to the source or object code, specifications, documents, abstracts and summaries thereof developed by or for Atleto in connection with the App, the Website or the Dashboard or the provision of the services to the University hereunder, or by Atleto pursuant to specifications or instructions provided by the University, including all embodiments and components of the App, the Website or the Dashboard, exclusive of the Athletic Data and University content furnished and licensed pursuant to Section 5.3 below, however, shall belong exclusively to Atleto. To the extent that any such materials are not Atleto's intellectual property pursuant to the terms hereof, the University hereby irrevocably assigns and transfers all right, title and interest therein to Atleto, including all intellectual property rights, and further agrees to execute any documents reasonably requested by Atleto for the purpose of effectuating such transfer and assignment, and applying for or obtaining any federal, state, local, or foreign patent or copyright rights therein, in perpetuity, even after termination of this Agreement for any reason.
- 5.3 The University hereby grants to Atleto a fully paid up, revocable, limited license in and to all applicable trademarks, service marks, text, images, graphic content, or other intellectual property required for Atleto to develop (or have developed) the App or the Dashboard, including the right to provide or make available all such information and materials to its third party service providers who are under a duty of confidentiality to Atleto. The University specifically authorizes Atleto (or its service providers) to copy, modify and create derivative works of any such materials and information provided by the University, and agrees to timely provide or make available to Atleto any required logos, trademarks, service marks, or graphic elements of its websites for use by or on behalf of Atleto in the development and maintenance of the App, including, without limitation, the University Group and the Dashboard. All such elements and materials and information are licensed to Atleto only to the extent needed to create (or have created), maintain (or have maintained) or

operate the App and the Dashboard, process transactions, and provide the services as contemplated in this Agreement.

- 5.4 The University grants Atleto authorization to place a decal, trademark, logo or other graphic content, notifying App users that the University Group is provided and powered by Atleto.
- 5.5 The University and its Users are responsible for procuring for themselves any third-party software required for each to access and use the Dashboard.

6. **MONITORING**

University acknowledges and agrees that Atleto has no obligation to monitor access to or use of the App or the Dashboard, but has the right to do so for the purpose of operating the App and the Dashboard, to ensure compliance with this Agreement, and/or to comply with applicable laws or orders from governmental authorities.

7. **MANDATORY MEDIATION; GOVERNING LAW; VENUE.**

- 7.1 Prior to seeking remedies at law or in equity, the University and Atleto agree to make a good faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through good-faith negotiations between the parties' respective project managers for a period of at least ten (10) days. If such negotiations fail to resolve the dispute, the parties shall attempt to resolve the dispute by involvement of executive level management for an additional ten (10) days. Should the parties fail to resolve any such disagreement within such second ten (10) day period, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, the parties may seek any remedies available at law or in equity from any court of competent jurisdiction subject to the exclusive venue provisions of this Agreement. Notwithstanding the foregoing, this Section 7.1 shall not preclude either party from seeking equitable relief from any court of competent jurisdiction.
- 7.2 This Agreement and any other matters relating to the deliverables, including, without limitation, the services, to be provided hereunder shall be governed by and construed in accordance with the laws of the State of New York, without reference to the choice of law principles thereof. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any New York State or Federal court sitting in Suffolk County, New York for any action or proceeding arising out of or relating hereto. The parties acknowledge and agree that the extent of damages to a party, in the event of a breach by the other party of certain provisions of this Agreement, including, but not limited to, the confidentiality provisions of this Agreement, would be difficult or impossible to ascertain, and that there may not be available to the aggrieved Party any adequate remedy at law. As such and notwithstanding the foregoing, this Section 7.2 shall not preclude either party from seeking equitable relief from any court of competent jurisdiction in which jurisdiction such equitable relief will be enforced.

8. **WARRANTIES**

- 8.1 For the term of this Agreement, Atleto warrants it has, and at all time during the Term will maintain, the requisite personnel, competence, skill and resources necessary to provide the services under

this Agreement and that the services provided under this Agreement shall be performed in a workmanlike manner and in compliance with all applicable laws.

- 8.2 Atleto hereby represents and warrants that the Dashboard will operate in material conformity with the applicable specifications set forth herein. Atleto shall promptly correct the nonconformity; *provided however*, that if such non-conformity arises as a result of action or inaction of the University, Atleto shall not be obligated to correct such non-conformity unless the parties enter into a separate agreement for such development work. Atleto shall not be liable for (i) failures caused by third party hardware or software (including the University's systems) other than if caused by its licensors, suppliers or vendors, (ii) failure of communications or the internet, (iii) misuse of the Dashboard by the Users, (iv) unanticipated usage volumes, any software used in connection with or in combination with the App or the Dashboard which is not specifically approved in this Agreement or by Atleto, or (v) the negligence or willful misconduct of the University or Users or third parties other than Atleto's suppliers, licensors or vendors.
- 8.3 The University represents and warrants that: (i) all data and information contained in the University databases used, provided to or accessed by the App or the Dashboard are true, legal, accurate, up to date, non-infringing, and non-fraudulent; (ii) the University has all right, title and interest required to allow usage of such data and information as contemplated hereunder; (iii) to the University's knowledge, no data made available or provided to Atleto for use through the Dashboard contains any viruses or other malware that may damage or interfere with the Website or the Dashboard; and (iv) any elements of text, graphics, photos, designs, trademarks, service marks, or other artwork furnished or made available to Atleto and/or its assigns for inclusion or use in or on the App or the Dashboard are owned by the University, or the University has permission from the rightful owner to use each of these elements and grant the licenses required herein.
- 8.4 Except as set forth in this Agreement, the University acknowledges and agrees that THE DASHBOARD IS PROVIDED "AS IS" AND "AS AVAILABLE." ATLETO AND ITS SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER ATLETO NOR ITS SUPPLIERS OR LICENSORS MAKE ANY WARRANTY THAT THE DASHBOARD WILL BE ERROR FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED, OR THAT THE DASHBOARD WILL MEET THE UNIVERSITY'S NEEDS. DATA TRANSFERRED TO AND FROM THE DASHBOARD MAY BE DONE SO UNENCRYPTED AND OVER VARIOUS NETWORKS THAT ARE NOT UNDER ATLETO'S CONTROL. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE UNIVERSITY UNDERSTANDS THAT IT AND ITS USERS DOWNLOAD FROM, OR OTHERWISE OBTAIN CONTENT OR SERVICES THROUGH, THE DASHBOARD AT THEIR OWN DISCRETION AND RISK.

9. **LIMITATION ON LIABILITY**

- 9.1 ATLETO SHALL HAVE NO LIABILITY: (a) FOR ANY DAMAGES CAUSED BY OR ARISING OUT OF THE LOSS OR INACCURACY OF DATA OR PROGRAMS PROVIDED BY THIRD PARTIES OTHER THAN ATLETO'S VENDORS, LICENSORS, AND SUPPLIERS, OR BY THE UNIVERSITY OR USERS; or (b) FOR FAILURE OF OR DELAYS RESULTING FROM THE PUBLIC INTERNET OR COMMUNICATIONS.

- 9.2 THE PARTIES AGREE THAT EACH PARTY'S LIABILITY HEREUNDER FOR ANY DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OF SERVICES, REGARDLESS OF FORM OF ACTION, SHALL NOT EXCEED THE FEES PAID BY THE UNIVERSITY. THE PARTIES AGREE THAT THESE DAMAGES LIMITATIONS REPRESENT AN AGREED ALLOCATION OF RISK BETWEEN ATLETO AND THE UNIVERSITY, AND THE UNIVERSITY EXPRESSLY WAIVES ANY RIGHT TO RECOVER DAMAGES IN EXCESS OF THE AMOUNTS SET FORTH ABOVE. ATLETO SHALL HAVE NO LIABILITY FOR ERRORS OR DAMAGE CAUSED BY THE ACTIONS OR OMISSIONS OF ANY THIRD PARTIES OTHER THAN ITS VENDORS, LICENSORS AND SUPPLIERS, INCLUDING BUT NOT LIMITED TO DATA SOURCED FROM THIRD PARTIES.
- 9.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST EMPLOYEE TIME, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION CONTRACT, STRICT LIABILITY AND NEGLIGENCE.
- 9.4 NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS AND/OR THE SERVICES UNDER THIS AGREEMENT MAY BE BROUGHT BY THE UNIVERSITY MORE THAN TWELVE (12) MONTHS FROM THE DATE OF OCCURRENCE OF THE CLAIMED ACT OR OMISSION GIVING RISE TO THE ACTION, UNLESS THE APPLICABLE STATUTE OF LIMITATIONS PROVIDES A SHORTER PERIOD, IN WHICH CASE SUCH SHORTER PERIOD SHALL APPLY.

10. INDEMNIFICATION

- 10.1 To the fullest extent permitted by law, Atleto agrees to indemnify, defend and hold harmless the University and its officers, employees, representatives, and agents (collectively, the "University Indemnified Parties") from and against any and all loss, claim, expense or damage, including, reasonable attorneys fees and disbursements of counsel (collectively, "Losses") incurred by the University Indemnified Parties in any action or proceeding brought against such party or parties as a result of (i) Atleto's breach of this Agreement, or (ii) claims brought by third parties alleging that the App or Dashboard infringes the intellectual property rights of such third party, solely to the extent such infringement does not relate to the intellectual property provided by the University. If, as a result of any claim or litigation brought pursuant to Section 10.1, subsection (ii) above, the University is permanently enjoined from using the Site by a final, non-appealable decree, or if Atleto believes that such injunction is possible or likely, then Atleto may, at its option and expense: (y) obtain for the University the right to continue to use the Site; or (z) replace or modify the Site so as to settle such claim or litigation, provided that such replacement contains substantially the same functions. If such settlement, replacement or modification of the Site is not reasonably practical in the opinion of Atleto, after giving due consideration to all factors including financial expense, Atleto may discontinue and terminate this Agreement upon thirty (30) days advance written notice to the University and refund to the University any fees paid in advance for future use of the Site. This Section 10.1 states the entire liability of Atleto with respect to any claims for infringement, and the University hereby expressly waives any other remedies.
- 10.2 The University hereby agrees to indemnify, defend and hold harmless Atleto and Atleto's subsidiaries, and affiliates, as well as each of their officers, employees, representatives, agents, and service providers (collectively, the "**Atleto Indemnified Parties**") from and against any and all Losses incurred by the Atleto Indemnified Parties in any action or proceeding brought against such

party or parties as a result of any (i) breach by the University or Users, or their employees, representatives, contractors, or agents, of this Agreement or (ii) claims brought by third parties alleging that any intellectual property provided by the University infringes the intellectual property rights of such third party.

- 10.3 The indemnified party shall provide the indemnifying party with prompt notice of any such Losses for defense and indemnification and shall cooperate reasonably with the indemnifying party in the defense, settlement or compromise of any such action, at the indemnifying party's cost and expense; provided, however, an indemnified party's failure to provide prompt notice to the indemnifying party or to reasonably cooperate shall not limit the indemnifying party's obligations hereunder unless the indemnifying party is materially adversely prejudiced by any such failures. The indemnifying party shall have sole control of the defense of any such action and all negotiations for its settlement or compromise, but shall not settle any claim that involves a remedy other than the payment of money by the indemnifying party without the prior written consent of the indemnified party.

11 Miscellaneous

11.1 The University may not use, allow to be used, or otherwise export or re-export the Site, or the underlying software, or any part thereof, or results derived therefrom, except as authorized by United States laws and regulations. In particular, but without limitation, the Site or software, or any part thereof or results derived therefrom, may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. The University represents and warrants that neither it nor any User, nor any contractor providing services to the University or Users, is located in, under control of, or a national or resident of any such country or on any such list.

11.2 Neither party shall be liable for any delay or failure to perform hereunder if such delay or failure is the result of an event beyond its reasonable control, including without limitation governmental acts, work stoppages, fire, riot, civil unrest, acts of terrorism, natural or man-made disasters, interference or interruption in telecommunications services, electrical failures, interruptions or alterations, acts of God and similar occurrences, *provided* the party prevented thereby from performing uses commercially reasonable efforts to ameliorate or work around such event or otherwise attempt to continue to perform notwithstanding the condition or event.

University hereby expressly agree to the terms and conditions of this Connected Account Agreement, the Terms and Conditions which are located on the Dashboard (the "T&Cs") and are incorporated herein by reference, and any updates or modifications to the T&Cs made from time to time by Atleto.