

## Terms & Conditions

**LAST UPDATED: Nov 21 2018**

Accepting the Terms and Conditions of Use. Welcome to DayTwo! Please read these terms and conditions carefully before using our website and application or any of the related services, as they constitute a legally binding agreement between you and DayTwo Ltd. and its affiliates ('DayTwo', 'Us', or 'We'), and check them periodically for changes.

**BY ACCESSING, USING OR REGISTERING FOR DAYTWO SERVICES, YOU SIGNIFY YOUR AGREEMENT TO THESE TERMS. IF YOU DO NOT AGREE, DO NOT USE THE SERVICE. YOU FURTHER AGREE THAT WE MAY COMMUNICATE WITH YOU BY ELECTRONIC MAIL, TEXT MESSAGING OR BY TELEPHONE CALL SUBJECT TO YOUR RIGHT TO OPT OUT OF COMMERCIAL MARKETING MESSAGES.**

Any use of this website, our applications, or the services available from time to time on or in connection with our website or applications, including, without limitation, ordering and submitting a samples kit for gut microbiome analysis, using your nutrition recommendations, gut microbiome analysis or any other information provided through your user account (collectively, the 'Service'), is subject to and conditioned upon assent to and compliance with, all of the terms and conditions below (the 'Agreement'). By using the Service you signify your consent to be bound by the agreement and that you are of legal age and capacity to form a binding contract.

We may change the terms of this Agreement from time to time by posting notice on Our website at [www.daytwo.com](http://www.daytwo.com) or through our applications. Your continued use of the Service shall constitute your consent to any changes made. If you do not agree to the new terms, you should not use the Service.

### 1. SERVICE.

As part of the Service we provide an analysis of Our subscribers' gut microbiome and any other relevant parameters that may have been tested from their samples ('Microbiome Analysis'), and online personalized nutrition recommendations based on our analysis ('Nutrition Recommendations').

**Please be aware that Our Services may be used by you only if you:**

- Are at least 18 years old.
- Are not pregnant, nor during 3 months after delivery.
- Are not undergoing fertility treatments, currently or in the last 3 months.
- Are not treated with short term insulin.
- Have not taken antibiotics or anti-fungal medication in the past 3 months, other than drops or cream, used over a month ago.

**If you have been diagnosed with, or suspect to suffer of, an allergy, chronic disease or other health condition which may impose limitations on or affect your diet, or in case you are undergoing any medical treatment or condition, currently or within the last 5 years, you are required to consult with your health care provider prior to using our Services and implementing any nutrition recommendations.**

- All information We provide is for self-educational and informational purposes only. We cannot guarantee any results from your use of the Service.
- You use the Service at your own risk. No health care, medical advice or diagnostics are provided as part of the Service and we are not a health care organization, health service provider, dietitians or a medical organization, and the Service does not constitute medical advice, treatment or diagnosis and is not a substitute for seeking professional medical advice or services. Our Service has not been evaluated by any Food and Drug Administration (FDA) and is not intended to diagnose, cure or prevent any disease. You should not rely on the Service as a substitute for qualified medical advice.
- Access and use of the Service and any content or information made available through the Service is personalized for each subscriber and intended only for the subscriber's own personal use and only in compliance with this Agreement.
- Portions of the Service may be subject to other agreements and policies which relate to a particular service or activity conducted through or offered on the Service, whether such service or activity are provided by DayTwo or not (including for example, conditions of the manufacturers of the samples kit or Continuance Glucose Monitoring Device ('CGM') with respect to appropriate use of the samples kit or CGM as applicable) ('Third Party Components'). Without derogating from sections 9 through 11 of this Agreement, it is hereby expressly clarified that the use of Third Party Components is subject to their providers respective terms and conditions and conditioned on your compliance with such terms and conditions. BY USING THE THIRD PARTY SERVICES YOU SIGNIFY YOUR CONSENT (I) THAT SUCH THIRD PARTY COMPONENTS ARE PROVIDED BY US 'AS IS' AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION REGARDING THE RESULTS OF USE OF MISUSE OF SUCH SERVICES AND (II) TO BE BOUND BY SUCH PROVIDERS' TERMS AND CONDITIONS.
- In circumstances of misconduct, such as violation of the letter or spirit of this Agreement or an infringement of the rights of others or any applicable laws or regulations, as determined by Us, We may, in our sole discretion and without notice or liability to you or any third party, refuse Service or terminate the Service at any time, and may immediately suspend or terminate your DayTwo account (if any) and block any and all current or future access to and use of

the Service (or any portion thereof), without derogating from any other right or remedy that we may have by law or otherwise.

- You acknowledge that we may, in our sole discretion and at any time(s), change or discontinue providing any part of the Service including imposing a fee for the use of certain services and features, upon notifying you to the email address associated with your DayTwo account, with a five (5) day advance notice of such change. Without derogating from the generality of the above, please be aware that certain features made available (whether through the Application or otherwise) in any version of the Services (whether freemium or premium) , may be made available on a temporary or limited basis. The Company does not guarantee the continuation or availability of any features made available and reserves the right to change, alter, limit, block, discontinue or remove any feature included in the Services, or impose a fee for the use of a feature (whether previously made available without charge or not).
- In addition, We may, from time to time, perform maintenance upon the Service resulting in interrupted service, delays or errors in the Service. We will attempt to provide prior notice of scheduled maintenance but cannot guarantee that such notice will be provided.
- Following the termination of your DayTwo account, subject to the provisions of the applicable law, We reserve the right to permanently delete your Microbiome Analysis and Nutrition Plan and have no obligation to provide you with a copy of such.
- Although we try to make the Service always available to you, We cannot make any guarantee and will not be held liable for any service disruptions, whether temporary or not. Further, Our Service may change from time to time and We may stop (permanently or temporarily) providing some services or any features within the Service, with or without prior notice to you.

## **2. Registration.**

1. Who can register to the services and how: each user which would like to subscribe for the service will be required to open a subscriber account ('Subscriber Account'). In order to find out if user is qualified for use of the Service, the user will be requested to adhere to certain criteria following opening the Subscriber Account. Following successful qualification, the user will be directed to continue with the process and subscribe for Our Service.
2. In addition to the questionnaire and as part of the registration process you will be requested to provide certain personal data, including among others name, address, email address, telephone number, payment information and certain health information (collectively, "Registration Data"). You agree to:
  - Provide true, accurate, current and complete Registration Data.
  - Maintain and promptly update the Registration Data to keep it accurate, current and complete.

- Maintain the security and confidentiality of any usernames, passwords and other information used by you to access the Service.
  - Refrain from impersonating any person or entity or misrepresent your identity or affiliation with any person or entity.
  - Immediately notify Us in writing if you become aware of any loss, theft or use by any other person or entity of any of your Registration Data or any other breach of security that you become aware of involving or relating to the Service.
3. **By providing your Registration Data to Us, you consent to Us sending and you receiving, by means of telephone, text message or e-mail, communications containing content of a commercial nature relating to the Service.** By providing us with your mobile telephone number and requesting that we communicate information to you by text messaging in the event we offer such feature as part of the Services. You consent to receive commercial text messages at that number as requested. While we do not charge a fee for text messages, your wireless service carrier may charge standard messaging, data, and other fees. You are responsible for these charges. In the event we offer text messaging service, we will provide you with instructions on how to stop further text messaging. Also, we will provide you with the opportunity to opt-out of promotional emails by providing an “unsubscribe” mechanism. You may request that we discontinue any promotional messages by telephone. Please note that we may continue to contact you by telephone or electronic mail for matters related to your account or transactions.
3. **Risk Factors relating to the Services.** In connection with your use of the Service, you acknowledge the following factors of risk and agree that any use of the Service by you, including, without limitation, any reliance on the Microbiome Analysis, the Nutrition Plan or other information provided through the Service, is made at your own discretion after considering such factors, and that you will be solely responsible for any resulting consequences.
- Nutrition Plan is based on the results of our analysis of your microbiome and other parameters as may be tested from your samples. Changes to your microbiome and other medical parameters may take place upon changes in your diet, age and health condition and such changes may subsequently require a different Nutrition Plan. You may order and send additional samples kits or CGM from time to time to learn of any changes in your Microbiome Analysis or Nutrition Plan.
  - The Service is not intended to (i) replace health care services which may be required in order to treat your medical condition or (ii) otherwise be used for any diagnostic or therapeutic purposes and is not a substitute for professional medical advice. You should always seek the advice of your physician or other health care provider with any questions you may have regarding diagnosis,

- cure, treatment, mitigation, or prevention of any disease or other medical condition or impairment or the status of your health.
- Nutrition Plan is focused only on blood glucose levels and doesn't take into account any other possible effect over your health.
  - We are not responsible for any adverse effect over any diseases, allergies or other medical or physical condition you may have or changes of your weight.
  - Our Nutrition Plan is diverse and comprehensive, but, naturally, it cannot contain all possible food combinations therefore you will be able to achieve same nutritional values from food combinations that do not appear in your Nutrition Plan.
  - Although we aim to make our laboratory analysis process and its results as accurate as possible, mistakes can happen, and our laboratory process may result in errors or inability to process your samples, due to, among others, the following reasons:
    - Your samples do not meet the requirements for such process, for example if the amount of the sample provided is insufficient, if the samples were damaged during shipment or not appropriately stored ('Unqualified Samples'). One of the reasons for Unqualified Samples may be misuse of the samples kit or CGM, therefore, when using the samples kit or CGM please make sure to follow the applicable guidelines.
    - Defects or delays caused during the shipment of your samples to the DayTwo laboratory.
    - Human error.
    - Unknown variables or data related to your health.
  - It is possible that we will not know whether an error has occurred during the laboratory process and we will be unable to know whether the results generated by the laboratory process, including the Microbiome Analysis and the Nutrition Plan as delivered to you, is inaccurate or flawed.
  - We attempt to make the process of ordering and submitting a samples kit and CGM as easy and as secured as possible. However, damage or loss may be caused to your samples kit or CGM. For example, We use third party service providers for the provision of the samples kit and CGM to you and its shipment to Us, and We cannot guarantee their actions or inactions.
  - Microbiome research constantly evolves and improves. While we measure many hundreds of thousands of data points from your microbiome, only a small percentage of them are known to be related to human traits or health conditions. Future scientific research may change the interpretation of your microbiome. In the future, the scientific community may show previous research to be incomplete or inaccurate.
  - Information from your Microbiome Analysis is highly sensitive information relating to your health condition. You should be advised of any possible adverse implications, legal or otherwise, before choosing to share any such information with third parties.

#### **4. ACCESS RIGHTS, LICENSE AND OWNERSHIP.**

- By accessing our Services through our website and application, we grant you a personal, revocable, non-assignable, and non-exclusive right to access and use the Services and the material provided through the Services for your own personal use, provided that you fully comply with the provisions of these Terms.
- Our website, applications and Services, as well as the underlying platforms and software, are proprietary property of DayTwo. All trademarks, trade names and logos appearing on Our website, applications and Services, whether registered or not, are propriety of their respective owners. DayTwo trademarks, slogans, service marks, trade names, and trade dress which appear via the Service are property of DayTwo.

#### 5. **General User Conduct.**

In connection with the Service, you agree (i) to abide by all applicable local, state, federal, national and international laws and regulations, (ii) only make use of information that you own or have a right to use, and (iii) only act appropriately. Without limiting the above, you may not:

- Allow or facilitate a third party, to violate or infringe any rights of Us or others or our policies or the operational or security mechanisms of the Service.
- Use Our website, applications and Services and any content available there through in any way that restricts or inhibits the use of the Service.
- You may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of any part of Our Services website and applications and/or the underlying software and platforms.
- Alter, delete, forge, frame, publicly display, publicly perform, rent, sell, lend, redistribute, sublicense, hyper-link, create derivative works or otherwise interfere with or in any manner disrupt, circumvent, or compromise, any part of Our Service, website and applications and/or the underlying software and platforms (including without limitation trademarks, service marks and logos contained therein ('Marks') but excluding content provide entirely by you).
- Access or attempt to access any of our systems, programs or data that are not made available for public use, or attempt to bypass any registration processes on the Service or any of the Service's security and traffic management devices.
- Use any robot, spider, other automated device or any tool-bar, web-bar, other web-client, device, software, routine or manual process, to access the Service, submit content, or monitor or scrap information from the Service.
- attempt to gain unauthorized access to the Services, website and applications and/or the underlying software and platforms, or any part of them, other accounts, computer systems or networks connected to the Services, through hacking or any other means or

interfere, or attempt to interfere with the proper working of the Services or any activities conducted via the Services by any means, including uploading or otherwise disseminating viruses, worms, or other malicious code.

- use the Services for any other purpose than your own non commercial, personal use.

We cannot and do not assure that other users of the Service are or will be complying with this Agreement, and, as between us, you assume all risk of harm or injury resulting from any such lack of compliance.

#### 6. **User Representations.**

As a condition to your use of the Service (either directly or via others), you warrant and represent that :

- You are at least eighteen (18) years of age and you are not precluded from using the Services due to a health or physical condition (including without limitation for reasons set forth in Section 1 above).
- You have all necessary right, power and authority to enter into and perform under this Agreement.
- You are entirely responsible for all your activity in connection with the Service.
- You understand that information you learn from Us is not designed to diagnose, prevent, or treat any condition or disease but rather intended to support nutritional changes that may normalize Our subscribers' blood glucose levels.
- You acknowledge that We urge you to seek the advice of your physician or other health care provider if you have questions or concerns arising from your Microbiome Analysis or Nutrition Plan.
- You guarantee that any samples you provide is your own and that you will not provide any samples of any other person unless you have legal authorization from such person to do so.
- Waiver of Property Rights: You understand that by participating in the Service, including providing any samples, having your microbiome information and other medical parameters processed, accessing your Microbiome Analysis or providing Registration Data, you acquire no rights in any research or commercial products that may be developed by Us or our collaborating partners. You specifically understand that you will not receive compensation for any research or commercial products that include or result from your participation in the Service.

#### 7. **Privacy**

#### **Policy.**

Your information, including among others your Microbiome Analysis and Nutrition Plan, is subject to our Privacy Policy at [www.daytwo.com](http://www.daytwo.com). By accessing this Service, you represent that you are subject either to US privacy regulation or Israeli privacy regulation and consent to the collection and use of information as described in our Privacy Policy, as may be amended by Us from time to time.

#### 8. **Proprietary**

#### **Rights.**

Any content provided through the Service (but excluding, for removal of

doubt any user personally identifiable information), including without limitation the Marks, are protected by copyrights, trademarks, service marks, patents or other proprietary rights, both with respect to any content and as a collective work or compilation, pursuant to laws and international conventions. Any rights to such content or the Service not expressly granted herein are reserved. We make no claim of ownership as to the trademarks of any third party linked or displayed on the Service, or with respect to any publisher or publication mentioned on the Service.

#### **9. User Feedback.**

We welcome any feedback or comments from you. However, please note in this regard that any ideas, feedback or suggestions pertaining to our business and services, such as ideas for new or improved products, technologies, website or tool enhancements, processes, materials, marketing plans or new product names, will automatically upon submission become the property of DayTwo, without any compensation to you. While under no obligation to review such submissions or to keep such submissions confidential, DayTwo may use or redistribute any such submission and its contents for any purpose and in any way it deems.

#### **10. Links to Other Websites and Applications and Services.**

The Service may contain links and references to certain health care information, opinions etc.' or to websites, applications or services of others including without limitation dietitian services (the 'Third Party Information'). We may, from time to time, at our sole discretion, add or remove Third Party Information. Such Third Party Information is provided solely as a convenience to you, and access to any such information and use of any third party product or service is at your own risk. We encourage you to be aware when you leave the Service, and to read the terms and conditions and privacy policy of each other website and applications that you visit. We do not review, approve, monitor, endorse, warrant, or make any representations with respect to such Third Party Information, services or products. In no event will We be responsible for the information contained in, transmissions received from, or your use of or inability to use, such websites or applications, or their practices.

#### **11. Disclaimers of all Warranties. THE SERVICE IS PROVIDED ON AN 'AS IS' AND 'AS AVAILABLE' BASIS. CERTAIN FEATURES OF THE SERVICE ARE UNDERGONGOING EVALUATION, DEVELOPMENT AND TESTING AND SHOULD BE TREATED AS "BETA VERSION". TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT. WITHOUT LIMITING THE ABOVE, WE MAKE NO WARRANTY WHATSOEVER WITH RESPECT TO (I) THE SERVICE MEETING YOUR REQUIREMENTS, OR BEING UNINTERRUPTED, CONTINUOUS, TIMELY, SECURE, OR**



**ERROR FREE; (II) WHETHER YOUR USE OF THE SERVICE OR THE CONTENT WILL GENERATE ANY RESULTS OR CONSEQUENCES, NOR IN TERMS OF THE CORRECTNESS, COMPLETENESS, AVAILABILITY, ACCURACY, RELIABILITY OR OTHERWISE, OR IN CONNECTION WITH SUBMISSIONS OR PREVENTION OF UNAUTHORISED ACCESS, SHARING OR DOWNLOAD OF CONTENT; OR (III) YOUR USE OF THE SERVICE IS LAWFUL IN ANY PARTICULAR JURISDICTION. YOUR USE OF THE SERVICE AND ANY ACTION OR INACTION BY USERS OF THE SERVICE (WHETHER IN RELIANCE OF THE MICROBIOME ANALYSIS, THE NUTRITION PLAN OR OTHERWISE), ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY RESULTING CONSEQUENCES.**

**12. Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY INJURY, MEDICAL CONDITION, DEATH, ACT OF GOD, ACCIDENT, DELAY, DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY (I) USE OR THE INABILITY (FOR ANY REASON) TO USE ANY PART OF THE SERVICE OR ANY THIRD PARTY COMPONENTS, INCLUDING, WITHOUT LIMITATION, INACCURACIES OR ERRORS OF IN THE ANALYSIS REPORT, NUTRITION PLAN OR OTHER INFORMATION PROVIDED AS PART OF THE SERVICE, (II) IN CONNECTION WITH THE SERVICE'S FACTORS OF RISK OR THE REALIZATION THEREOF (III) THIS AGREEMENT OR FOR COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR (IV) REPRESENTATIONS, WARRANTIES, ACTIONS OR INACTIONS OF ANY USER OR OTHERS (WHETHER OR NOT PROVIDED AS A RESULT OF THE SERVICE); IN EACH CASE, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. All of the above limitations shall apply notwithstanding any failure of essential purpose of any limited remedy and are fundamental elements of the bargain between Us and you. In no event shall our liability to you exceed the amount of fees You paid to Us within twelve (12) months prior to a claim.

**13. Limitation of Claims.**

Any claim or cause of action arising out of or related to use of the Service or to the Agreement must be filed within one (1) year after such claim or cause of action arose, or be forever barred.

**14. Indemnification.**

YOU RELEASE, AND AGREE, AT YOUR OWN EXPENSE, TO INDEMNIFY, DEFEND AND HOLD HARMLESS US, OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND AFFILIATES, FROM ALL LIABILITIES, CLAIMS, ALLEGED CLAIMS, LOSS AND DAMAGES (OF EVERY KIND, WHETHER

KNOWN OR UNKNOWN AND SUSPECTED OR UNSUSPECTED), AND INCLUDING REASONABLE ATTORNEY'S FEES, RELATED IN ANY WAY TO: (I) YOUR USE OF, ACCESS TO OR RELIANCE ON THE SERVICE, THE MICROBIOME ANALYSIS OR THE NUTRITION PLAN, INCLUDING WITHOUT LIMITATION our actions or omissions while providing THE services (EXCEPT FOR OUR BREACH OF THE AGREEMENT AS A RESULT OF WILLFULL MISCONDUCT OR FRAUD ON OUR PART); (II) YOUR CONTENT, PERSONAL INFORMATION AND REGISTRATION DATA; (III) ANY BREACH OF, OR DEFAULT IN, THIS AGREEMENT BY YOU; (IV) ANY ACT OR OMISSION OF YOU, WHETHER OR NOT ILLEGAL, NEGLIGENT, RECKLESS, OFFENSIVE, UNAUTHORIZED OR UNPROFESSIONAL; (V) ANY DEFECTIVE, CONTAMINATED OR MALICIOUS DEVICE OR SOFTWARE, INCLUDING WITHOUT LIMITATION VIRUSES, INTENTIONALLY OR NEGLIGENTLY DISSEMINATED BY YOU OR ORIGINATING FROM YOUR EQUIPMENT OR NETWORK; (VI) YOUR DAYTWO ACCOUNT, BY YOU OR BY ANY ONE ACCESSING YOUR ACCOUNT WITH OR WITHOUT YOUR CONSENT. We will provide you with written notice of such claim, suit or action. You will not enter into any settlement or compromise of any such claim without Our prior written consent. We reserve the right, in our sole discretion, to assume the exclusive defense and control of any matter subject to indemnification by you. In all events, you shall cooperate fully in the defense of any claim.

**15. Governing Law and Exclusive Courts.**

This Agreement will be governed by laws of the State of Israel without regard to its choice of law or conflicts of law principles. You and Us consent to the exclusive jurisdiction and venue in the courts in Tel Aviv, Israel, except that temporary relief to enjoin infringement of intellectual property rights may be sought in any court.

**16. Infringement Notices and Takedown.**

If you believe that any material contained on the Service infringes your copyright, please report this to us. We will investigate any report in accordance with the terms of Our Copyright and Content Policy (“**Content Policy**”) at [www.daytwo.com](http://www.daytwo.com).

**17. General.**

This Agreement and our Privacy Policy, our Content Policy and other policies as may from time to time be posted through the Service, comprise the entire agreement between you and Us, and state our and our suppliers' entire liability and your exclusive remedy with respect to the Service, and supersede all prior agreements pertaining to the subject matters. If any provision of this Agreement is held to be contrary to law, such provision shall be construed, as nearly as possible, to reflect the original provision and the other provisions remain in full force and effect. The section titles in this Agreement are solely used for convenience and have no legal or contractual significance. No provision of the Agreement shall be construed against Us but rather shall be construed in a neutral and fair manner as terms entered into by a fully-informed party on a voluntary basis after opportunity to confer with advisors and legal counsel about the meaning and effects of the terms of this Agreement. You agree to pay all costs and

expenses (including reasonable attorneys' fees) that we may incur in order to collect any amounts that you owe under this Agreement. No waiver of any term of this the Agreement shall be deemed a further or continuing waiver of such term or any other term, and any failure to assert any right or provision under the Agreement shall not constitute a waiver of such term. Our suppliers are third-party beneficiaries of this Agreement. This Agreement, and any rights granted hereunder, may not be transferred or assigned by you, but may be assigned by Us to a successor of all or substantially all of Our business or assets.

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