

Part A. General user terms

1. Your acceptance

1.1 These are the terms on which **Diabetes WA Ltd (ABN 77 867 587 369)** (referred to as **Diabetes WA, we, our** or **us**) permits users (referred to as **you** or **your**) to:

(a) access and use the following Diabetes WA websites, including using the services and functionality made available through the websites:

- (i) www.diabeteswa.com.au;
- (ii) <https://shop.diabeteswa.com.au>;
- (iii) www.aboriginalhealthdiabeteswa.com.au;
- (iv) www.desmondaustralia.com.au;
- (v) www.myhealthybalance.com.au; and
- (vi) www.getontrackchallenge.com.au

(together, the **Websites**).

(b) view and interact with any content, information, communications, advice, text or other material provided by Diabetes WA (**Diabetes WA Content**) or any User Content (defined in clause 5.1); and

(c) upload User Content to the Websites and communicate with Diabetes WA.

1.2 You agree to be bound by these Terms when you use, browse or access any part of the Websites.

1.3 Diabetes WA may from time to time review and update these Terms including to take account of new laws, regulations, products or technology. Your use of the Websites will be governed by the most recent Terms posted on the Websites. By continuing to use the Websites, you agree to be bound by the most recent Terms. It is your responsibility to check the Websites regularly for updated versions of the Terms.

2. Changes to the Website

2.1 The Websites are subject to change at any time without notice and may contain errors.

3. Diabetes WA Content

3.1 The Websites are owned and operated by or on behalf of Diabetes WA.

3.2 The Diabetes WA Content on the Websites is for general information and promotional purposes only. Diabetes WA does not warrant or make any representations as to any third



party products or services described or referred to on the Websites. Any use of the Websites and Diabetes WA Content, materials or information created by another person or organisation (and which you may access through our Websites) is at your own risk.

- 3.3 The Diabetes WA Content on the Websites is obtained and developed from a variety of sources including but not limited to collaborations with third parties and information provided by third parties under licence. Inclusion of Diabetes WA Content on the Websites is not an endorsement of any organisation, product, service or advice.
- 3.4 All intellectual property rights, including copyright, in the Websites and Diabetes WA Content are owned or licensed by Diabetes WA or any of its related entities. You must not copy, modify or transmit any information contained on the Websites. However, you may copy and download Diabetes WA Content where permitted to do so on the Websites and only for your private purposes and provided you do not remove any copyright notices or any Diabetes WA trade marks or logos.
- 3.5 The trade marks "Diabetes WA", "Get on Track", "My Healthy Balance" and other names of Diabetes WA referred to in the Websites are trade marks of Diabetes WA. You are not permitted to use, modify or permit the modification of any trade marks, logos or trade names appearing on the Websites.
- 3.6 Diabetes WA grants you a non-exclusive and non-transferable licence to use the Websites for your own personal use, subject to the restrictions specified elsewhere in these Terms. It is not to be otherwise used for commercial exploitation.
- 3.7 If you have a complaint regarding any Diabetes WA Content, Diabetes WA's sole obligation will be to review any written complaint notified to it and, if it sees fit, in its sole discretion, to modify or remove the particular Diabetes WA Content.

4. No provision of medical advice

- 4.1 The Websites, Diabetes WA Content, products and services made available through the Websites offer general health and medical information, but are designed for educational purposes only. This information is not a substitute or replacement for professional medical advice, diagnosis or treatment, and you should not rely on this information for any such purposes. You should always consult a healthcare professional if you have any concerns or questions about your health, and you should not disregard, avoid or delay obtaining medical or health related advice from your healthcare professional because of something you may have read on the Websites.
- 4.2 Nothing contained in the Websites, Diabetes WA Content or the products and services made available through the Websites is intended to be, and must not be taken to be, the practice of medical or counselling care.
- 4.3 Whilst advancements and developments in medical research may affect the health, fitness and nutritional information contained in the Websites, Diabetes WA Content or services made available through the Websites, we do not guarantee that such information will always include the latest or most recent findings or developments.



- 4.4 Your access or use of the Websites, Diabetes WA Content or services made available through the Websites does not in any way create between you and Diabetes WA, a confidential or privileged relationship, a relationship of practitioner and patient, or any other relationship that would give rise to any duties on our part.
- 4.5 Diabetes WA may provide professional healthcare advice during face to face consultations and on the Diabetes WA 1300 001 880 number, but the Websites or Diabetes WA Content cannot be considered a substitute for such advice. Should you need advice on managing your diabetes please contact our credentialed diabetes educators on 1300 001 880.

5 User Content

- 5.1 When you use the Websites, you may upload information, content, communication, text or other material to the Websites (User Content).
- 5.2 You agree to be solely responsible for any User Content that you upload to the Websites. You warrant and represent that any User Content you upload to the Websites will not violate these Terms.
- 5.3 You retain all intellectual property rights in the User Content you upload to the Websites. By uploading the User Content, you grant us a perpetual, non-exclusive, royalty free, irrevocable, transferable and worldwide licence (including the right to sub-licence) to use, adapt, copy, communicate, reproduce or modify the User Content to the extent necessary to allow you to use the Websites in accordance with these Terms. You consent to us providing your aggregated de-identified User Content to third parties including our funding bodies.
- 5.4 We may access or examine any User Content and at our discretion monitor, move, remove, block, modify, edit, refuse to upload or disable access to User Content which we consider, in our sole discretion, to breach any law or these Terms or to be otherwise unacceptable.
- 5.5 You acknowledge that we:
 - (a) have no responsibility or liability for the deletion or failure to store any User Content uploaded by you or any other user on the Websites; and
 - (b) are not responsible for any User Content uploaded to the Websites by you or any user nor under any obligation to monitor, move, remove, block, modify, edit, refuse to upload or disable access to it.
- 5.6 You represent and warrant that:
 - (a) you own the User Content or have the necessary licences, rights, consents and permissions to publish the User Content you upload on the Websites;
 - (b) you have the right and power to grant the licence contained in clause 5.4 to us;



- (c) the User Content uploaded by you will not infringe the intellectual property rights of any third party; and
- (d) you will not upload User Content that will cause you to breach these Terms, in particular clause 6.1.

5.7 You understand that we only guarantee confidentiality with respect to any User Content you upload to the Websites to the extent outlined in our Privacy Policy:

5.8. You acknowledge and agree that we are under no obligation to take legal action in relation to commencing, defending, enforcing, settling or compromising (as appropriate) any infringement, claim or action relating to your intellectual property rights in User Content or Diabetes WA Content.

6. Prohibited uses

6.1 You agree that in accessing and using the Websites, you will not engage or attempt to engage in any activities that:

- (a) download (other than page caching) or modify the Websites or any portion of the Websites;
- (b) impersonate or falsely claim to represent a person or organisation;
- (c) are commercial, including selling, marketing, advertising or promoting goods or services;
- (d) frame the Websites without Diabetes WA's express written permission;
- (e) post, link to, or otherwise communicate or distribute any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or information, or otherwise use the Websites in a manner which is unlawful or would infringe the rights of another person including any intellectual property rights;
- (f) post, link to, or otherwise communicate or distribute any material or information that we deem inappropriate;
- (g) bypass (or attempt to bypass) any security mechanisms imposed by the Websites;
- (h) provides access or links to any material (including links to peer to peer network trackers/beacons) which may infringe the intellectual property rights of another person;
- (i) deletes or alters or attempts to delete or alter attributions, legal notices, trademarks or copyright marks on any material contained in the Websites;
- (j) knowingly posts or transmits or permits the posting or transmission of any material, which contains a computer virus or other harmful data, code or material; or



(k) solicit information (including login information) or access another person's Account.

7. Access and communication

- 7.1 Subject to the consumer guarantees provided for in the ACL (as defined in clause 21), Diabetes WA does not warrant that you will have continuous access to the Websites.
- 7.2 Diabetes WA will not be liable if the Websites are unavailable to you due to computer downtime attributable to malfunctions, upgrades, preventative or remedial maintenance activities, interruption in telecommunications supply or otherwise.
- 7.3 Diabetes WA does not guarantee the delivery or security of communications over the internet as such communications rely on third party service providers, and electronic communication (including electronic mail) is vulnerable to interception by third parties.
- 7.4 Whilst Diabetes WA takes reasonable precautions to protect information transmitted via the Websites, Diabetes WA cannot and does not guarantee the security or confidentiality of these communications or the security of the Websites.
- 7.5 Diabetes WA does not provide, and has no control over, communications, networks or services, the internet or other technology required or used across the Websites and accepts no responsibility for any direct or indirect loss in any form associated with them, whether due to congestion, technical malfunction, viruses or otherwise.

8. Links and advertisements

- 8.1 The Websites may contain links to other websites. We have not reviewed all of the third party websites linked on the Websites and are not responsible for and will not be liable in respect of their content or accuracy (including websites linked through advertisements). Diabetes WA provides those links as a ready reference for searching for third party goods and services on the internet and not as an endorsement, support or sponsorship of those websites, their operators, the goods, services or content that they describe.
- 8.1 Facebook, Twitter, Instagram, LinkedIn, YouTube and other third party websites which are linked to the Websites, are not covered by these Terms, and may have their own terms and conditions and privacy policy. If you choose to access these third party linked sites, you do so at your own risk. Diabetes WA is not responsible for and will not be liable in respect of the content or operation of those websites or any of the goods, services or content that they describe. Diabetes WA is not responsible for and will not be liable in respect of any incorrect link to an external website.

9. Marketing

- 9.1 We may contact you from time to time to provide you with information, advertisements, marketing material, promotional material or other similar material that may be of interest to you in respect of our Websites, the Diabetes WA Content and any other products or services we may offer our members or customers.



- 9.2 By accepting these Terms, you consent to us using your details to contact you in respect of such information, advertisements, marketing, promotional material or other similar material. If you do not wish to receive marketing, advertisements, promotional material or other similar material from us, you may opt out by contacting the media team via media@diabeteswa.com.au.

10. Privacy

- 10.1 Any personal information submitted by you (whether personal information of you or another individual which you have the necessary consents to provide) to Diabetes WA is subject to and will be handled in accordance with Diabetes WA's Privacy Policy. The Privacy Policy forms part of these Terms and can be found at www.diabeteswa.com.au. You agree that, by using the Websites or communicating with Diabetes WA, you have read the Privacy Policy, understood its contents and consented to its requirements.
- 10.2 You must not upload any personal information of another individual to the Websites unless you first make them aware of Diabetes WA's Privacy Policy and have their consent to upload such personal information.

11. Use of cookies and analytics

- 11.1 Our Websites may use 'cookies' from time to time. We use this information to enhance the content and services offered on our Websites. We use Google Analytics and Facebook Pixel to help analyse how you use our Websites. Please refer to our Privacy Policy for further information on how we use cookies, Google Analytics and Facebook Pixel.
- 11.2 If you do not want your Websites visit data reported by Google Analytics, you can install the Google Analytics opt-out browser add-on. For more details on installing and uninstalling the add-on, please visit the Google Analytics opt-out page at <https://tools.google.com/dlpage/gaoptout>.

Part B. Diabetes WA memberships

12. Diabetes WA memberships

- 12.1 You may register to become a Diabetes WA member or renew your membership through our Website.
- 12.2 We reserve the right to refuse online registration of any membership, at our sole discretion.
- 12.3 A Diabetes WA membership entitles you to access exclusive members' only online resources and content. A membership subscription is for an initial period of one (1) or two (2) years.
- 12.4 The fees payable for your Diabetes WA membership are advertised on our Website. Please note the fees set out on our Website are subject to change as we review our membership fees annually.



13. Refunds of memberships

- 13.1 If we refuse your registration to be a Diabetes WA member in accordance with clause 12.2 we will refund pro rata the remaining membership fee attributable to the unused period of your membership, via our online service provider's payment system or direct transfer to your account.
- 13.2 If you stop being a member for any reason you will not be entitled to any refund (or part refund) of any membership fee already paid to us by you, unless the Diabetes WA directors in their discretion determine otherwise.

Part C. Diabetes WA products and services

14. Orders for products through the Diabetes WA Shop

- 14.1 By placing an order via our Websites for products or services we make available online including via the Diabetes WA Shop (**Diabetes WA Products**), you are making an offer and commitment to purchase such products, services or both in accordance with these Terms. An order is subject to acceptance or rejection by Diabetes WA in its discretion after receipt of the order.
- 14.2 Once you have placed an order for the Diabetes WA Products via our Websites, you will receive an email confirming the details of your order and receipt of payment (where applicable) (**Confirmation Email**). If you do not receive a Confirmation Email, your order may not have been accepted. You may contact Diabetes WA on 1300 001 880 to check the status of your order.
- 14.3 Notwithstanding anything to the contrary, we may at any time following receipt of your order accept, decline, or limit your order for any reason whatsoever, whether or not your credit card has been charged or we have otherwise received payment from you. We will issue you with a refund if your credit card has been charged or we have received payment from you, and your order is cancelled by us.
- 14.4 Diabetes WA may not accept orders for Diabetes WA Products originating from outside Australia.

15. Refunds and returns

- 15.1 The Diabetes WA Products sold through the Diabetes WA Shop website is subject to and will be handled in accordance with the Diabetes WA Refunds Policy. The Diabetes Refunds Policy will form part of these Terms and can be found at <https://shop.diabeteswa.com.au/refunds/>.



16. Changes to product, services and pricing

- 16.1 We may modify advertised prices, product and service offerings, including the Diabetes WA Products at our discretion for any reason (including but not limited to changes in market conditions, product discontinuation, changes in availability, manufacturer changes, errors in advertising, and in other circumstances).
- 16.2 Any information we provide in relation to the availability of the Diabetes WA Products is a guide only and is subject to change without notice. We will not be liable for any lack of availability of the Diabetes WA Products that you may order through the Websites.

17. Fundraising

- 17.1 You may access certain information and our fundraising products and services (**Fundraising Products**) via our Website in order to organise or run a fundraising event or challenge in support of Diabetes WA.
- 17.2 You are responsible for complying with any relevant State or Federal laws (including taxation or fundraising laws) in respect of any fundraising activities you organise or run in support of Diabetes WA, which may involve the use of our Fundraising Products. Such fundraising activities may include raffles, lotteries and other gaming activities.
- 17.3 Diabetes WA accepts no liability however arising out of or in connection with any fundraising event or challenge using our Fundraising Products or is otherwise organised or run in support of Diabetes WA.
- 17.4 Diabetes WA is under no obligation to provide refunds due to a change of heart, but will endeavour to ensure that any genuine errors are rectified. Should an error be made by Diabetes WA or its financial institution(s), full refunds will be made immediately upon notification in writing of the error and reasonable costs borne by Diabetes WA. Diabetes WA will process such a refund within 30 days of the receipt of such request.

Part D. My Healthy Balance and Get on Track Challenge

18. My Healthy Balance and Get on Track Challenge Registration

- 18.1 In order to access certain features and functionality of the My Healthy Balance website and Get on Track Challenge website you will have to register for an account (**Account**). If and when you create or use an Account, you represent and warrant that you have the authority to provide the information necessary to create or use an Account, and are at least 18 years of age.
- 18.2 We reserve the right to refuse registration of an Account, at our sole discretion.
- 18.3 We do not currently charge a fee to create an Account via the My Healthy Balance website and Get on Track Challenge website.



- 18.4 You will be fully responsible for all acts and omissions of any person using your password and Account, as if they were your own acts and omissions. You agree that you will not share, disclose, or permit disclosure of, your password, let anyone else access your account or do anything that would risk the security of your Account. Diabetes WA will not in any event be liable for any loss, damage, claims, costs or expenses arising out of the use or misuse of your password and Account, and you will indemnify Diabetes WA against all loss, damage, claims, costs or demands in this regard.
- 18.5 You must notify us immediately if you become aware of any unauthorised access or use of your Account.
- 18.6 You agree that you will not create more than one personal Account using the same email address and if we disable or terminate your Account for any reason, you will not create another one without our permission, whether through the use of your own personal details or those related to you or created by you.
- 18.7 Your account may be suspended or terminated by us if the User Content you upload via your Account involves:
- (a) any of the prohibited uses as set out in clause 6.1; or
 - (b) is otherwise deemed inappropriate in our absolute discretion.

Part E. General terms

19. Payment

- 19.1 Payment for an order in respect of Diabetes WA Products or a Diabetes WA membership is made online through the Websites (**Online Payment**).
- 19.2 Your order will be delivered to you using one of our third party couriers.
- 19.3 Diabetes WA uses online payment service providers (including eWAY and PayPal) to provide the payment services for the Website. For more information on eWay and PayPal security processes, please visit their website at www.eway.com.au and www.paypal.com/au.
- 19.4 We accept Online Payment via using PayPal, VISA or MasterCard.
- 19.5 We only accept credit cards issued in Australia. The credit card holder must be either the billing or shipping recipient.
- 19.6 If you choose to pay by credit card, you authorise us to debit the amount that is payable for an accepted order from your nominated credit card account.
- 19.7 If we are unable to successfully process your credit card for your order that is accepted by us, then we may cancel your order.
- 19.8 You must not pay, or attempt to pay, for orders through any fraudulent or unlawful means.



- 19.9 We will provide you with a receipt at time of confirmation of the order (in respect of Online Payments) which specifies the total fees and charges for the products and services in your order.
- 19.10 Any specific terms and conditions of supply for any products or services purchased via the Websites will be notified to you via the Websites before you finalise your order. Your confirmation of any order indicates your acceptance of those terms and conditions of supply, which will upon confirmation of the order be incorporated into these Terms in respect of that order.
- 19.11 You may be entitled to concession pricing in respect of the Diabetes WA Products and Diabetes WA membership subscriptions offered via our Websites if you are a member of the National Diabetes Service Scheme or Diabetes WA or hold a seniors, pensioner, Department of Veterans Affairs, healthcare card or student card. You must quote your concession details at the time of placing your order to receive concession pricing for such Diabetes WA Products or Diabetes WA membership subscription.

20. Indemnity

- 20.1 You will fully indemnify Diabetes WA in respect of all loss, damage, costs, expenses (including legal fees on a full indemnity basis), fines, penalties, claims, demands and proceedings howsoever arising, whether at common law (including negligence) or under statute, in connection with any of the following: (a) any breach of these Terms by you;
- (b) your use of the Websites;
 - (c) your communications with Diabetes WA;
 - (d) User Content you upload on the Websites; or
 - (e) any third party use of the Websites through your Accounts (whether authorised or not).

21. Warranties, consumer guarantees and limitation of liability

- 21.1 Subject to clause 21.2, any representation, warranty, condition, guarantee or undertaking that would be implied in these Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 21.2 Nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law being Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (**ACL**) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 21.3 To the fullest extent permitted by law, the liability of Diabetes WA for a breach of a nonexcludable guarantee referred to in clause 21.2 is limited, at Diabetes WA's option, to:
- (a) in the case of goods supplied or offered by us, any one or more of the following:



- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
or
 - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services supplied or offered by us:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

21.4 Diabetes WA will not be liable to you for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data, loss of reputation or loss of revenue (irrespective of whether the loss or damage is caused by or relates to breach of contract, tort (including negligence), statute or otherwise) arising in connection with the Websites, the Diabetes WA Content, all links to or from the Websites or the goods and services advertised or referred to on the Websites.

Subject to this clause, the maximum aggregate liability of Diabetes WA for all proven losses, damages and claims arising out of or in connection with these Terms or a supply under these Terms, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of \$100.

22. Termination of your access to the Websites

- 22.1 Diabetes WA may at any time immediately terminate your access (including restricting access) to the Websites or any feature of the Websites for any reason (including due to your breach or alleged breach of these Terms) in its sole discretion and without prior notice.
- 22.2 This clause 22.2 and clauses 9, 10, 11, 19 and 21 will survive termination of your access to the Websites in accordance with clauses 22.1 and will continue to the benefit of and be enforceable by Diabetes WA.

23. Jurisdiction and law

- 23.1 These Terms are governed by and must be construed in accordance with the laws of the State of Western Australia, Australia. You submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms, their performance and subject matter.

24. International use

- 24.1 We make no representation or warranty that any competition, offering or content accessible through the Websites is appropriate or available for use in locations outside Australia. If you



choose to access the Websites or our products and services from other locations, you do so at your own risk and are responsible for compliance with all applicable laws. You are not authorised to access the Websites from any location where doing so would be illegal.

- 24.2 You understand that some countries have import restrictions on certain goods or materials. If you are outside Australia, you will be responsible for checking whether such restrictions apply before uploading User Content or accessing our products and services. If you are outside Australia you will become the importer and will be liable to pay local taxes or duties, and you will assume all liability under any customs or import laws and regulations.

25. Severability

- 25.1 Each provision of these Terms is severable from the others and no severance of a provision will affect any other provision.

26. Contacting us

- 26.1 If you have questions about the Websites or these Terms, please contact us by clicking on the "Contact Us" button on the Websites <https://diabeteswa.com.au/general-enquiry/> and following the instructions from there. If you have a query about Diabetes WA's Privacy Policy, the contact details for our Privacy Officer are set out in the Privacy Policy.

