

## Terms of Use

When you Access *FoodSwitch* you agree to these Terms of Use ("**Terms**").

### General Terms and Conditions of Use

When you first download, install, view, display, use ("**Access**"), *FoodSwitch*, you are required to accept these Terms before use. Importantly, we may change these Terms from time to time. You are responsible for informing yourself of any changes by regularly reviewing these Terms at <http://www.georgeinstitute.org.au/sites/default/files/foodSwitch-terms-of-use.pdf> and accepting the Terms.

### Definitions

In these Terms:

a) "**We**", "**Us**", "**Our**" means The George Institute for Global Health ("**TGI**"), a medical research institute situated in Sydney, New South Wales, Australia and any Sponsor, including its related entities as the context requires; and

b) references to "**FoodSwitch**" are references to the *FoodSwitch* iPhone<sup>1</sup> and Android<sup>2</sup> applications, (or any other version of the *FoodSwitch* application released by TGI from time to time) and any supporting *FoodSwitch* applications, including the TGI App, TGI Website and all *FoodSwitch* Websites.

### 1. Food product information and associated alternatives on *FoodSwitch*

1.1. When you Access *FoodSwitch* you may view food product information and associated alternatives which may be of interest to you and your family. In relation to such information, you acknowledge and agree that:

#### Any information:

a) is provided "**as is**";

b) does not take into account your individual circumstances and is general information only;

c) has been developed and reviewed by health professionals and to the best of their knowledge is current at the time of publishing and based on reputable sources;

d) has been compiled based on the ingredients list, nutritional panel information or other relevant information on the product's packaging at the time of data collection, and as the information is provided by third parties we may not in a position to verify this information. We do not warrant that any such information is true or accurate and we exclude all liability in respect of the accuracy, completeness, fitness for purpose or legality of that information;

e) has been provided on the basis that all persons using *FoodSwitch* undertake the responsibility for assessing the accuracy and relevance of its information for their personal circumstances and that they rely on it entirely at their own risk. You are free to ignore the associated alternatives. It is your responsibility to check that the alternative offerings are acceptable to you; and

f) should be used as a guide only and should not be relied upon as a substitute for professional medical, nutritional or other health professional advice. We recommend that you consult your doctor or other qualified health professional if you have questions or concerns about your or your family's health.

**1.2.** All users, especially those with special dietary requirements or food sensitivities or allergies, should ensure that they are clear on the ingredients of the product prior to consumption. TGI recommend that, where further dietary information is important to you, for example because you have an allergy or specific dietary requirement, you should check with the product manufacturer directly.

**1.3.** Manufacturing recipes change from time to time. We make no warranties or representations regarding the completeness or accuracy of the information or any recommendations and are not liable for any loss or damage (financial or otherwise) you or your family suffer arising out of the use of, or reliance on, the information, except that which cannot be excluded by law. The information may be updated, altered or removed, from time to time, at any time, without notice to you.

**1.4.** Any information about Us that appears on FoodSwitch is provided for your interest. If you require specific information about TGI you should visit [www.georgeinstitute.org.au](http://www.georgeinstitute.org.au).

## **2. Disclaimers, Liability and Indemnity**

**2.1.** Subject to any statutory rights you have which by law may not be excluded (and this includes any applicable consumer guarantees under New South Wales Australia applicable law):

- a)** when you Access FoodSwitch you do so at your own risk; and
- b)** you are responsible for the consequences of your use of FoodSwitch, including where you upload and share content.

**2.2.** Except as required under Australia law/applicable law, none of Us, Our affiliates, nor any of their respective employees, agents, third party content providers, nor licensors, make any express or implied representation or warranty about FoodSwitch, the information it provides and your use of that information, or shall any of them be liable, in contract, tort (including negligence) or otherwise, for any direct, indirect, special or consequential loss, damages, expense, or reliance in connection with FoodSwitch, its use, its content or any products or services referred to within FoodSwitch. This includes (but is not restricted to) any loss, damage or expense you might suffer or incur as a result of any of the following:

- a)** your reliance on the completeness, accuracy, suitability or currency of any content on FoodSwitch;
- b)** failure of, or delay in, the performance, operation or transmission via FoodSwitch or data on or through FoodSwitch, a computer virus or other harmful component, a loss of data, a communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- c)** any data usage, roaming or other charges you incur when accessing the internet through your mobile or other device;
- d)** accessing any third party web sites, servers or applications (including, without limitation, Twitter and Facebook) through FoodSwitch. We do not accept responsibility for the content or operation of third party web sites, applications or services. Unless otherwise stated, We do not endorse any third party web sites, applications or services accessible through FoodSwitch. Your use of any third party web sites, applications or services is at your own risk;
- e)** defamatory, threatening, offensive or unlawful conduct of third parties;
- f)** we shall not be liable for failure to perform or delay in performing any obligation under these Terms to the extent that the failure or delay is caused by any circumstances beyond Our reasonable control, including but not limited to acts of God, war, laws or regulations of any government or supra-national authority, flood, fire, interruption of power supplies or electronic communications networks, riots or industrial disputes; and
- g)** if any provision of these Terms is found by a court to be invalid or unenforceable, the invalidity or unenforceability will not affect the remaining Terms.

**2.3.** FoodSwitch is provided "as is", with all faults, and with no representations or warranties of any kind, either expressed or implied. The express Terms contained herein shall apply in place of all warranties, conditions, Terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. No oral or written information or advice given by TGI, their agents, or authorised representatives shall create a warranty or in any way increase the scope of this warranty.

**2.4.** We are not liable to any other party for any loss or damage, including direct, consequential, incidental or indirect loss or damage, including loss of profit (whether direct, consequential, incidental or indirect) resulting from a breach of these Terms by Us or the negligence of Us, or Our representatives.

**2.5.** You indemnify Us, Our affiliates and respective employees, agents, third party content providers and licensors (each an "Indemnified Party") from and against all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred or suffered by any Indemnified Party ("Loss") as a direct or indirect consequence of you using FoodSwitch. This includes, without limitation, any Loss incurred by virtue of any breaches of third parties' intellectual property rights as a direct or indirect consequence of you using FoodSwitch.

**2.6.** We reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us and you agree to cooperate with our defence of these claims. You agree not to settle any matter without prior written consent of Us.

**2.7.** This disclaimer, liability limitation and indemnity do not exclude any rights which by law may not be excluded.

**2.8.** Where the Gluten Filter is available, the Gluten Status of products is based on the information reported by the manufacturer at the time of data collection. Manufacturing recipes change from time to time and whilst every care has been taken to ensure accuracy, currency and completeness, it cannot be guaranteed. All users should ensure they are clear on the ingredients of the product prior to consumption.

**2.9.** None of these Terms restrict any of your statutory rights. For further information about your statutory rights, contact your local authority.

### **3. FoodSwitch Community Standards**

**3.1.** FoodSwitch is designed to let you and friends share nutritional information. To assist achieving this, all users must comply with the following FoodSwitch Community Standards (the "Standards"):

- a)** you must not use FoodSwitch to share any content that is offensive, defamatory, pornographic, threatening to another person or organisation, incites violence or is otherwise unlawful;
- b)** you must not use FoodSwitch to harass, bully, threaten or intimidate any user or other person, or to incite hatred;
- c)** you must not use FoodSwitch to carry on any activity that is unlawful, or to support or facilitate any unlawful activities;
- d)** you must not use FoodSwitch for commercial purposes, including uploading or posting any content that is commercial in nature, or that can be characterised as spam;
- e)** you must not upload to FoodSwitch any viruses, malicious code or do anything designed to disable or interfere with the proper functioning of the application; and
- f)** you must not do anything that encourages or facilitates a breach of these Standards. TGI reserve the right at its sole discretion to prevent you using FoodSwitch if you fail to comply with the Standards.

**3.2.** You are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content on FoodSwitch to TGI, who undertake to correct and/or remove such content or any part thereof if it reasonably considers that it is appropriate to do so.

**3.3.** You accept that the community aspect is integral to FoodSwitch and agree to respect and abide by the Terms at all times when accessing or using FoodSwitch, and to interact and engage with fellow users in a respectful and dignified manner.

#### **4. Customer Support**

**4.1.** We have no obligation to provide you with customer support of any kind. However, We may provide you with customer support from time to time, at Our sole discretion.

#### **5. Intellectual Property**

**5.1.** Unless otherwise indicated, The George Institute of Global Health owns, controls and/or reserves all rights (including, without limitation, copyright) in and to all information, text, material, graphics, advertisements, software code and data comprising FoodSwitch (the "**TGI Property**").

**4.2.** You must not modify, copy, reproduce, republish, frame, upload to a third party, post, transmit or distribute the TGI Property in any way except as expressly provided for within FoodSwitch, or expressly authorised in writing by TGI. You are not authorised, without TGI's prior written permission or the permission of any other relevant rights holder, to copy, broadcast, reproduce, republish, store (in any medium), transmit, broadcast, distribute, show or play in public, adapt or change in any way, the content of, or create a derivative work from FoodSwitch for any other purpose. This prohibition does not extend to content which is expressed to be freely available for re-use or replication, subject to any conditions TGI specifies.

**5.3.** You may not use any trademark (whether registered or otherwise) of TGI without our respective prior, specific, written permission.

**5.4.** Unless otherwise indicated, you are authorised to download and view any content, and use the software comprising FoodSwitch for your own personal, non-commercial use, provided that you keep intact all copyright and other proprietary notices.

**5.5.** You must not, without TGI's prior written permission in each instance as appropriate, exploit FoodSwitch, or any of the TGI Property for commercial uses or purposes.

**5.6.** The use by TGI of a third party trademark on FoodSwitch is not intended to indicate any association with, or endorsement by TGI of that trademark.

**5.7.** Any unauthorised use, alteration or dissemination of the information or content on FoodSwitch is strictly prohibited.

**5.8.** You will indemnify Us against any loss, liability, cost or expense (including legal costs and expenses on a full indemnity basis) suffered or incurred in connection with any claim, action, demand or proceeding alleging that the publication, use or display of any content uploaded by you to FoodSwitch as contemplated by these Terms, infringes the intellectual property rights of any other person.

**5.9.** Apart from any fair dealing for the purpose of private study, research, criticism or review, as

permitted under the *Copyright Act 1968* (Cth), no part of *FoodSwitch* may be reproduced without the written permission of TGI in each instance.

## **6. Privacy**

**6.1. Collection:** When you access *FoodSwitch* and share information on *FoodSwitch*, TGI not will collect any identifiable data about you.

**6.2. Sharing information:** You may choose to share product information via Facebook and Twitter. You should refer to the terms of use, privacy and security settings of those third party applications to determine how your information is shared and handled within those applications.

**6.3. Images:** Where a device uses a camera to support *FoodSwitch* data collection, the mobile device camera can be used to take images of product information. These images will be stored by TGI to verify product data entered.

## **7. Applicable laws and enforceability**

**7.1.** By accessing and using *FoodSwitch*, you agree that the laws of Australia will govern these Terms, and you irrevocably and unconditionally submit to the jurisdiction of Australia courts in respect of any dispute which may arise from or in connection with these Terms.

**7.2.** We do not warrant that the versions of *FoodSwitch* that operate around the world comply with the laws of any country outside of your territory. If you access and use *FoodSwitch* from outside of your territory, you do so at your own risk and you accept responsibility for ensuring or confirming compliance with all laws that apply to you as a result of that access or any consequent transactions or dealings with Us.

**7.3.** Nothing in these Terms excludes, restricts or modifies any condition, warranty, right or remedy which cannot by law be excluded, restricted or modified. If any provision of these Terms is found by a court to be invalid or unenforceable, the invalidity or unenforceability will not affect the remaining Terms.

**7.4.** No failure or delay by Us to exercise any of its rights will be regarded as a waiver of its rights, nor will it affect the validity of any part of this User Agreement.

## **8. System requirements**

**8.1.** In order to use *FoodSwitch* in a mobile phone device, you need to have:

- a) an Apple<sup>1</sup> mobile device running iOS 7.1 or above; or
- b) an Android<sup>2</sup> device running versions 4.3 or above.

**Please note:**

- a) If you are using a smartphone or tablet without a camera capable of auto-focus, *FoodSwitch* may not be compatible with the device. Without auto-focus, the pictures of the barcode will be blurry and *FoodSwitch* will be unable to identify the barcode; and
- b) You will also need mobile/cellular data or a Wi-Fi internet connection to download *FoodSwitch* and access the *FoodSwitch* network. Check with your mobile/internet service provider for details of data download and internet usage charges.

**8.2** Although *FoodSwitch* is developed according to reasonable professional standards, in line with industry practice We cannot warrant that:

- a) FoodSwitch is able to operate stably under or in compatibility with any operation system or device; or
- b) FoodSwitch is free of defects, viruses, or malicious codes.

However, if We notice any malfunction or defect, virus or malicious codes in FoodSwitch, We will use reasonable efforts to rectify them.

#### **9. What happens if you do not accept these Terms?**

You must accept these Terms in order to use FoodSwitch.

<sup>1</sup> iTunes iPhone, iPod Touch and iPad are trademarks of Apple Inc., registered in the U.S. and other countries, App Store is a service mark of Apple Inc.

<sup>2</sup> Android and Google Play are trademarks of Google Inc.