

BFDC ONLINE USER AGREEMENT:

This is a User Agreement between you and the Crown in right of the State of New South Wales, acting through the Department of Primary Industries, an office of the Department of Trade and Investment, Regional Infrastructure and Services (ABN 72 189 919 072) located at 161 Kite Street Orange NSW 2800 (NSW DPI), setting out the terms and conditions on which you may access and use the BFDC Database through the *BFDC Interrogator*.

Your online access and use of the *BFDC Interrogator* is deemed acceptance of these terms and conditions.

Recitals

- a) The Grains Research and Development Corporation ("GRDC") provided the principal funding for the *Making Better Fertiliser Decisions for Cropping Systems in Australia* ("BFDC") Project.
- b) The BFDC Project has developed the BFDC Database.
- c) The BFDC Database is jointly owned by NSW DPI, and the GRDC. It contains data owned by third-party contributors. NSW DPI has the authority to licence the use of the BFDC Database to third parties.
- d) You wish to access and use the BFDC Database through the *BFDC Interrogator*.
- e) NSW DPI has agreed to give you a licence to use the *BFDC Interrogator* and BFDC Database on the following terms and conditions.

1. LICENCE OF THE BFDC DATABASE

NSW DPI grants to you a non-transferable, non-exclusive, revocable licence to use the online *BFDC Interrogator* and BFDC Database on the terms of this Agreement. The licence cannot be sub-licensed to any other party.

NSW DPI is not responsible for the supply of any hardware, operating system or application software or any other items that may be required by you to use the online *BFDC Interrogator*.

2. DURATION OF LICENCE

This licence commences on the day you are given access to the *BFDC Interrogator* by NSW DPI.

NSW DPI may terminate this Agreement and revoke the licence with immediate effect if:

- a) you breach any of the terms of this Agreement and fail to remedy the breach within 7 days of notice from NSW DPI (or longer period agreed by NSW DPI),
- b) the *BFDC Interrogator* becomes unavailable for use for any reason, or
- c) it determines in its sole discretion that termination is required for any other reason.

On termination of this Agreement, you must immediately cease use of the *BFDC Interrogator* and all information and data generated by or obtained from the BFDC Database.



3. RIGHTS OF NSW DPI

NSW DPI reserves the right to restrict your licence to access the *BFDC Interrogator* as it determines necessary.

NSW DPI may revise and update the terms of this Agreement at any time and post them online. If you continue to use the *BFDC Interrogator* after any changes have been posted online, you will be deemed to have accepted those changes.

4. PURPOSE OF USE

You must only access and use the *BFDC Interrogator* for the following purposes:

- a) **Development of appropriately valid soil test-crop response calibrations and critical soil test levels/ranges for assessing the nitrogen, phosphorus, potassium and sulphur status of soils for different grain crops.**
- b) **Development of extension or other materials for the purposes of making better fertiliser decisions for cropping systems in Australia.**
- c) **Identifying knowledge gaps for future research and development in connection with fertiliser decisions for cropping systems in Australia.**

You must not use or access the BFDC Database or the *BFDC Interrogator* for any other purpose without prior written approval from NSW DPI. NSW DPI maintains the right to approve alternative uses for the BFDC Database in consultation with appropriate third-party partners.

5. GENERAL CONDITIONS OF USE

You must not:

- a) **change, alter or manipulate any data or presentations of data obtained from the *BFDC Interrogator*, or BFDC Database,**
- b) **use any such data or information to mislead or deceive in any way,**
- c) **sell raw data or information obtained from the BFDC Database or the *BFDC Interrogator* to any other person.**

You must keep your password and access details confidential and are responsible for all actions conducted by any party using that password and access details.

6. ACKNOWLEDGEMENT AND PUBLICATION

You must not publish any data or information obtained from the BFDC Database or the *BFDC Interrogator* in any publication or any extension or education material (any published or presented use of the data) without the prior written approval of NSW DPI.

In any publication or extension or education material (any published or presented use of the data), you must acknowledge the source of all data and material obtained from the BFDC Database as being developed under the BFDC Project funded by the GRDC. Acknowledgement must be given as:

NSW DPI (2012) Making Better Fertiliser Decisions for Cropping Systems in Australia: online database, NSW DPI and the Grains Research and Development Corporation, access date, www.bfdc.com.au

7. INTELLECTUAL PROPERTY

All intellectual property ("IP") arising from the BFDC Project outputs is jointly owned by the GRDC and the State of New South Wales.

The BFDC Database contains significant quantities of data provided by third parties. Those parties retain ownership of that data. All of the data contained in the BFDC Database has been licensed for use in connection with the BFDC Database and must not be used for any other purpose except as expressly authorised under this Agreement.

The *BFDC Interrogator* for the BFDC Database has been created using software owned by Geographic Web Solutions Pty Ltd which has been licensed for use with the Database ("the GWS Software").

You do not acquire any title or interest to any of the IP in the BFDC Database or *BFDC Interrogator*, the GWS Software or the third-party data.

You must take reasonable steps to protect the BFDC Database and the *BFDC Interrogator* from unauthorised access and use and immediately notify NSW DPI if you become aware of any infringement or threatened infringement of any IP in the BFDC Database, the GWS Software or the third-party data.

8. EXCLUSION OF LIABILITY

The State of New South Wales, the author and publisher take no responsibility for the accuracy, currency, completeness or reliability of any information included in the BFDC Database. NSW DPI does not guarantee that access to the *BFDC Interrogator* will be uninterrupted.

You use the BFDC Database and *BFDC Interrogator* at your own risk. To the full extent permitted by law, the State of New South Wales and the GRDC excludes all conditions and warranties and all liability arising from or connected to the use of or reliance on any material contained in the BFDC Database, including without limitation any interference with or damage to your computer system, software or data.

In no circumstances will NSW DPI or GRDC be liable to you for any indirect, incidental, special and/or consequential losses or damages including without limitation loss of profits, goodwill, data or opportunity. To the extent that liability for breach of any implied warranty or condition cannot be excluded then the liability of NSW DPI will be limited to the amount paid by you to access the *BFDC Interrogator*.

9. GENERAL INFORMATION ONLY

The information contained in the BFDC Database is provided as general information only and such information should be used in conjunction with other information or professional advice. You should obtain any appropriate professional advice relevant to your particular circumstances.

10. INDEMNITY

You indemnify NSW DPI against all liability, loss, damage or injury including consequential loss suffered by you in connection with this Agreement or the use of the *BFDC Interrogator* and/or the BFDC Database by you or any other person gaining access through you. This indemnity is without prejudice to any other rights that NSW DPI may have at law or under this Agreement or statute.

11. EVALUATION

NSW DPI requests that users evaluate the *BFDC Interrogator* in confidence. If you elect to do so, then NSW DPI will collect evaluation data from you and will own that data and may publish the data if it elects to do so. At no stage will your personal details be made public.

12. GENERAL

The following clauses will survive termination of this Agreement; 7 (Intellectual property), 8 (Exclusion of liability) and 10 (Indemnity), together with this clause 12 and any other clause which by its nature is intended to survive the end of the Agreement.

This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that State.

No term of this Agreement may be waived except in writing.

