

DATA LICENSE AGREEMENT

By downloading or using DATA from this website (www.yieldgap.org), you (USER) agree to the following terms of use, which is a legal agreement between USER and GYGA. If you do not agree to these terms you may not use this DATA.

Whereas:

- A. The Global Yield Gap Atlas (GYGA) provides robust estimates of untapped crop production potential on existing farmland based on current climate and available soil and water resources;
- B. GYGA is a partnership between Wageningen University and Research (The Netherlands) (hereafter also referred to as: "WUR") and University and Nebraska-Lincoln (USA) (hereafter also referred to as: "UNL") .
- C. GYGA is also the name of the database platform developed by researchers from UNL and WUR in collaboration with agronomists with knowledge of production systems, soils, and climate governing crop performance in their countries;
- D. For commercial use of the DATA from GYGA a license agreement is needed. All use by a private company is considered as commercial use. A private company is referred as an institution that is established with a profit motive.
There are different commercial license types available, either for a single DATA delivery or multiple DATA delivery (annual) and depending on the size of the company;

User agrees that GYGA will provide use of the DATA to USER according to this DATA License Agreement ("DLA") subject to the following obligations and provisions:

DEFINITIONS:

'DLA' means this license agreement;

'**Confidential Information**' means any confidential information generated by GYGA or received from GYGA pursuant to this Agreement;

'**DATA**' means the all the data that can be downloaded from the GYGA platform which includes but not limited to data on yield gap, yield potential, actual yield, water productivity, nutrients requirement, and agronomic data (soil, crop management system) at country-level, country simulation model run results level, crop-country combinations level, continent-level.

'**Intellectual Property Rights**' means copyright, database right, trade name right, plant variety right, trademark right, patent right, design and design right and topography right (chips right);

'**Knowhow**' means all information and expertise in relation to the research, development or use of the Inventions including, without limiting the generality of the foregoing, DATA, materials, knowledge, methods, techniques known or used by GYGA.

Article 1 RIGHTS AND OBLIGATIONS

1.1 USER acknowledges that the DATA provided under this agreement is GYGA's sole and exclusive property and that:

- GYGA has expended significant resources gathering, assembling, and compiling the DATA, and that the DATA is the valuable property of GYGA.

- The DATA set provided under the agreement is an original compilation protected by copyright laws; and
 - comprises and contains the trade secrets of GYGA.
- 1.2 GYGA grants to USER, under the terms and conditions set forth in this Agreement, a non-exclusive, non-transferable license for the use by USER of DATA.
- 1.3 USER is not permitted to use the DATA to do any of the following:
- Copy or reproduce or resell the DATA as they are (even if merged with other materials) other than expressly authorised;
 - Sell, license, reproduce, distribute, transfer or disclose the DATA to any third party, whether alone or in combination with any other text, data, software, or graphics
 - Use the DATA with any fleet tracking, GPS routing or navigation;
 - Reverse engineer, decompile or disassemble the DATA
 - Use the DATA in an internet display; or
 - Alter or remove any copyright notice or proprietary legend contained in or on the DATA
- 1.4 The DATA are to be downloaded only by the email address that is linked with a license subscription.
- 1.5 USER acknowledges and agrees that it has no right to license the use, reproduction, or distribution of the DATA and Documentation to any person, firm or entity.
- 1.6 USER may not make any claim to the DATA or any copyrights, trademarks, or other intellectual property or proprietary rights related to the DATA. USER acknowledges that no license, right, title, or interest is granted to USER except as expressly set forth in this agreement. USER agrees to use its best efforts and will take all reasonable steps to protect the DATA from any unauthorized use, reproduction, publication, disclosure or distribution. USER acknowledges and agrees that the DATA contains confidential information developed or acquired by the Institutes. USER agrees to treat the DATA as confidential, not to disclose or permit to any third party or entity access to the DATA or any portion thereof without GYGA's prior written permission and to insure that any employees of USER who receive access to the DATA are advised of its confidential and proprietary nature and USER's obligations under this DLA.
- 1.7 User shall not use the name, trademark, or logo of GYGA or the Institutes, or any of the developers of the DATA in any manner without prior written approval from such person or entity. However, User agrees that any publication of research results obtained with the DATA will (with GYGA's approval) acknowledge its use and its origin at Institutes by an appropriate citation as specified in the documentation or otherwise by GYGA.
- 1.8 USER hereby declares that it accepts the license of use granted above by GYGA in accordance with the terms and conditions set forth in this Agreement and not to use the DATA for any other purpose.

Article 2 COMPENSATION

- 2.1 In consideration of the license granted herein, USER shall pay to GYGA a license fee depending on the type of license being selected. See more information on the types of license and the fees on the GYGA website. Based on this information, the Licensee fee is paid to GYGA through the online payment form. Without the payment of the license, a USER does not have the right to access and use the DATA for commercial purpose.

- 2.2 If the amount(s) invoiced to and owed by USER are not (fully) paid within sixty (60) days of the date of such invoice, GYGA retains the right, without prejudice to any other legal rights or measures available, to charge contractual interest at a rate of 1% per month or part-month on the amount due. In addition, all judicial and extrajudicial costs which GYGA incurs in collecting the amount due, shall be at the expense of Licensee, whereby the extrajudicial costs are set at 15% of the total amount due.

Article 3 FORCE MAJEURE

- 3.1 Neither Party shall be in default under the Agreement by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, and regulations, delays in transit or delivery, inability to secure necessary governmental priorities for materials, or any fault beyond its control without its fault or negligence.
- 3.2 USER is aware and agrees that GYGA shall, under the current Corona virus (COVID-19) situation, take all reasonable measures to perform its contractual obligations. However, GYGA reserves the right to adjust the planning if and to the extent necessary to execute all national and international measures in place to prevent the further spreading of COVID-19.

Article 4 LIABILITY AND INDEMNIFICATION

- 4.1 With regard to this non-exclusive license, USER is itself responsible for the implementation of the DATA.
- 4.2 User is aware of and agrees that the development of the DATA and its use by User include external data, generated by third parties or forming part of the public domain.
- 4.3 Neither GYGA nor UNL and / or WUR, nor any of their employees, contractors, or consultants make any representation, guarantee or warranty regarding the software, its fitness or usefulness for any particular purpose, merchantability, non-infringement, title, operability or the accuracy of any outcomes generated using the software. Outcomes derived from use of the DATA are intended to be advisory only, to help guide decisions about crop management practices and should not replace professional judgement and common sense. User accepts the DATA "as is", "where is" and "with all faults". User accepts the DATA at its own risk and GYGA shall not be liable for any loss or damages as a result of user's usage of the DATA.
- 4.4 Under no circumstances will GYGA nor UNL nor WUR nor any of their affiliates, employees or other representatives be liable to user or any other person for any loss of goodwill, work stoppage, computer failure or malfunction, loss of DATA, costs of procurement of substitute goods or services, or any indirect, special, incidental, exemplary, punitive, or consequential damages of any character, or for any other damages or losses, specifically including damages to crops resulting from the application of the DATA, or for any claim by any other party even if made aware of the possibility of such damages or such damages were foreseeable.

In no event will GYGA nor UNL nor WUR be liable to User or any other person in excess of the license fees paid to GYGA for the license granted in section 1 above, even if such remedy should fail of its essential purpose. USER agrees that this limitation of liability is an essential element and material term of this DLA without which GYGA would not grant user any license to the DATA.

Article 5 TERMINATION AND ASSIGNMENT

5.1 Validity of commercial licensing:

- If annual license is selected, the validity is 1 year after the subscription gets activated by GYGA with automatic renewal. The commercial licensing will be renewed automatically on annual basis. In case USER wants to end the subscription, USER must inform GYGA accordingly, at least 3 months before the end of the running period.
- If single-data delivery license is selected, the license allows only one-time download of one data file after the subscription gets activated.

5.2 The DLA will terminate automatically if USER fails to comply with the limitations described above or otherwise commit any material breach of the terms hereof.

5.3 This DLA further ends immediately in case of bankruptcy, (provisional) suspension of payment, closing down c.q. liquidation of the company of USER

5.4 If this Agreement ends GYGA shall remain at all times the owner of the DATA. In this respect, on termination, USER must destroy all copies of the DATA and Documentation and USER shall immediately cease to use and thereafter refrain from using the DATA. For this purpose, USER provides GYGA or his therefore appointed attorney access to the company of the USER in order to be able to verify that USER has complied with the aforementioned obligation to destroy the DATA and to cease the use.

Article 6 GENERAL

6.1 The failure of either Party hereto to enforce at any time or for any time any of its rights under the Agreement shall not be construed to be a waiver thereof or of the right of such Party thereafter to enforce each and every provision of the Agreement.

6.2 The DLA does not constitute and shall not be construed as constituting a partnership, agency, joint venture, or distribution agreement between GYGA and USER.

6.3 If any provision of this DLA should be or become fully or partly invalid or unenforceable for any reason whatsoever or should violate any applicable law, this DLA is to be considered divisible as to such provision and such provision is to be deemed deleted from this DLA, and the remainder of this DLA shall be valid and binding as if such provisions were not included herein. In that case, it shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as legally possible, comes nearest to what the Parties desired or would have desired according to the sense and purpose of the DLA, had they considered the point when concluding the DLA and which shall be acceptable to both Parties.

6.4 This DLA represents the complete agreement concerning this agreement between the parties with respect to the DATA and supersedes all prior agreements and representations between them.

6.5 This DLA has been drawn up in English. In the event of any discrepancy in this Agreement between the English text and any translations thereof, the English language version shall prevail.

Article 7 GOVERNING LAW / COMPETENT COURT.

- 7.1 This Agreement shall be exclusively governed by Dutch Law by and shall be construed in accordance with the laws of the Netherlands, with the exception of those laws that exclusively apply for the Caribbean.
- 7.2 Any disputes, controversy or claim arising under, out of or relating to this Licence Agreement and any subsequent amendments of this Licence Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be in submitted to the exclusive jurisdiction of the Court of First Instance of The Hague, The Netherlands.

**WHEN USING THE DATA, USER EXPLICITLY AGREES TO THE TERMS AND
CONDITIONS DESCRIBED IN THIS DLA**