

# Beet Guru App Terms of Use

These App Terms of Use govern your access to and use of the Beet Guru website and application (together, “the Beet Guru App”). At the foot of these Terms of Use you will find the website address to our Website Terms of Use which includes our Privacy Policy.

Please read these Terms of Use carefully before you download, install or use the Beet Guru App. By using any Beet Guru website, or by downloading and or using the Beet Guru App, or by using or accessing any information generated from the Beet Guru App you confirm that you agree to these App Terms of Use and to the Privacy Policy. If you do not agree, do not use our website and do not download and use our Beet Guru App or any information generated from it.

## Access to and permitted uses of the Beet Guru App

1. Access to and use of the Beet Guru App is not guaranteed and may be restricted or blocked without prior notice for maintenance, operational or technical reasons.
2. You may only access and use the Beet Guru App to calculate a fodder beet mean yield and calculate an upper and lower range of yields for you or your clients' farming purposes and to transact lawful and authorised business with us and for no other purpose.
3. You must not use our websites or mobile apps to make an unauthorised, false or fraudulent calculation and you must not take any action that could interfere with the normal operation of the Beet Guru App.
4. To download, install, access or use the Beet Guru App, you must be 18 years of age or over.
5. The Beet Guru App must only be used in New Zealand for New Zealand fodder beet yield calculations. We operate the software underlying and required for your use of the Beet Guru App from New Zealand and it is possible that some downloads from the Beet Guru App could be subject to government export controls or other restrictions. If you download anything from or use the Beet Guru App, you represent that you are not subject to such controls or restrictions. We make no representation that anything is appropriate, permissible or available for use outside New Zealand, and using the Beet Guru App from countries in which such use or the information available from such use is illegal, restricted or not permitted, is expressly prohibited. If contrary to these Terms of Use you access or use the Beet Guru App from or in locations outside of New Zealand, you do so on your own initiative and are responsible for:
  - a) ensuring that what you are doing in that country is legal; and
  - b) the consequences and compliance by you with all applicable laws, regulations, byelaws, codes of practice, licences, registrations, permits and authorisations (including any laws that relate to businesses providing services).
  - c) all access to the Beet Guru App through your mobile device and for bringing these Terms of Use to the attention of all such persons.
6. You acknowledge and agree that we may use any material which you submit to us or the Beet Guru App for the purpose

of use on the Beet Guru App, for our own research and business purposes or for general marketing (by any means and in any media, including, but not limited to, on our website) our services, and you grant to us an irrevocable, royalty-free, worldwide, assignable, sub-licensable licence to do so. You agree that you waive your moral rights to be identified as the author and we may modify your submission.

## Your Obligations

7. Use of the Beet Guru App does not include the provision of a mobile device or other necessary equipment to access it. Certain functions of the Beet Guru App, such as the ability to download and store your fodder beet yield reports, and to use your device's GPS location function will require the Beet Guru App to have an active internet connection. We shall not have any responsibility or liability for any telephone or other costs you may incur. The connection can be Wi-Fi, or provided by your mobile network provider, but we cannot take responsibility for the Beet Guru App not working at full functionality if you do not have access to Wi-Fi, and you do not have any of your data allowance left.
8. If you are using the Beet Guru App outside of an area with Wi-Fi, you should remember that your terms of agreement with your mobile network provider will still apply. As a result, you may be charged by your mobile provider for the cost of data for the duration of the connection while accessing the Beet Guru App, or other third party charges. In using the Beet Guru App, you accept responsibility for any such charges, including roaming data charges if you use the Beet Guru App outside of your home territory (i.e. region or country contrary to condition 5) without turning off data roaming. If you are not the bill payer for the device on which you are using the Beet Guru App, we assume that you have received permission from the bill payer for using the Beet Guru App.
9. You shall not in any way use the Beet Guru App or submit to us or to the Beet Guru App or to any user of the Beet Guru App anything which in any respect:
  - a) is in breach of any law, statute, regulation or byelaw of any applicable jurisdiction;
  - b) is fraudulent, criminal or unlawful;
  - c) is inaccurate or out-of-date;
  - d) may be obscene, indecent, pornographic, vulgar, profane, racist, sexist, discriminatory, offensive, derogatory, harmful, harassing, threatening, embarrassing, malicious, abusive, hateful, menacing, defamatory, untrue or political;
  - e) impersonates any other person or body or misrepresents a relationship with any person or body;
  - f) may infringe or breach the copyright or any intellectual property rights (including without limitation copyright, trademark rights and broadcasting rights) or privacy or other rights of us or any third party;
  - g) may be contrary to our interests;
  - h) is contrary to any specific rule or requirement that we stipulate on the Beet Guru App in relation to a particular part of the Beet Guru App or the Beet Guru App generally; or
  - i) involves your use, delivery or transmission of any viruses, unsolicited emails, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or computer programming routines that are intended to damage, detrimentally interfere with,

surreptitiously intercept or expropriate any system, data or personal information.

rights and licenses granted to you in these Terms of Use will end; (b) you must stop using the Beet Guru App, and (if needed) delete it from your device.

10. We are offering you this Beet Guru App to use for your own personal and professional use without cost, but you should be aware that you cannot send the Beet Guru App on to anyone else, and you are not allowed to reproduce, duplicate, copy, re-sell, or modify the Beet Guru App, any part of the Beet Guru App, or our trademarks in any way except as set out in condition 16. You must not sell or use any part of the materials on or data derived from the BeetGuru App for commercial gain without obtaining a licence to do so from us. You are not allowed to attempt to extract the source code of the Beet Guru App, and you also should not try to translate the Beet Guru App into other languages, or make derivative versions. The Beet Guru App itself, and all the trade marks, copyright, database rights and other intellectual property rights related to it, belong to us. If you are accessing or using the Beet Guru App to generate information for another third party (eg your customer), you confirm that:
  - a) You have that third party's permission to use their information and access the Beet Guru App on their behalf governed by these Terms of Use; and
  - b) It is your responsibility to ensure that these Terms of Use are brought to that third party's attention.
11. You agree not to access without authority, interfere with, damage or disrupt:
  - a) any part of the Beet Guru App;
  - b) any equipment or network on which the Beet Guru App is stored;
  - c) any software used in the provision of the Beet Guru App; or
  - d) any equipment or network or software owned or used by any third party.

#### **Availability of the Beet Guru App, Security & Accuracy**

12. You are responsible for ensuring the security of the personal information held on your computer, mobile or other device. If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of these Terms of Use.
13. We make no warranty that your access to the Beet Guru App will be uninterrupted, timely or error-free. Due to the nature of the Internet, this cannot be guaranteed. In addition, we may occasionally need to carry out repairs, maintenance or introduce new facilities and functions.
14. Access to the Beet Guru App may be suspended or withdrawn to or from you personally or all users temporarily or permanently at any time and without notice. We may also impose restrictions on the length and manner of usage of any part of the Beet Guru App for any reason. If we impose restrictions on you personally, you must not attempt to use the Beet Guru App under any other name or user or on any other mobile device. At some point we may wish to update the Beet Guru App. The Beet Guru App is currently available on Windows, Android and iOS – the requirements for these systems (and for any additional systems we decide to extend the availability of the Beet Guru App to) may change, and you will need to download the updates if you want to keep using the Beet Guru App. We do not promise that we will always update the Beet Guru App so that it is relevant to you and/or works with the Windows/iOS/Android version that you have installed on your device. However, you agree to always accept updates to the application when offered to you. We may also wish to stop providing the Beet Guru App, and may terminate use of it at any time without giving notice of termination to you. Unless we tell you otherwise, upon any termination, (a) the

#### **Intellectual Property**

15. Your use of the Beet Guru App must not infringe the intellectual property rights of any person.
16. The "Agricom" and "Beet Guru" names and logos and all related names, trademarks, service marks, design marks and slogans are our trademarks. The material on the Beet Guru App is protected by copyright law and the names and logos are trademarks and are protected by trademark law. We retain all intellectual property rights worldwide to the software, technology, processes, materials and products on the Beet Guru App. You must not use, copy, monitor, modify, transmit, store, extract, publish or distribute any material on or accessed via our websites or mobile apps without prior written permission from us; except that you may print (or download onto a single computer or device) copies of information that are directly relevant to a yield calculation you have made or a product or service you have purchased, or genuinely intend to purchase, and distribute to your clients for their farming purposes at no cost to them.
17. You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
18. If you print off, copy or download any part of the Beet Guru App in breach of these Terms of Use, your right to use the Beet Guru App will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

#### **Third party features, products and services**

19. Third party features, products and services that may be available for use on the Beet Guru App or may be accessed via our websites or mobile apps are subject to compliance with the terms and conditions of the third party owners of the relevant features, products or services. The third party terms and conditions may, amongst other things, govern the ownership, use of, and access to the third party features, products or services. The Beet Guru App may also contain the ability to calculate fodder beet yield for plant variety names owned by third parties, and the limitations of liability, disclaimers and indemnity in these Terms of Use apply in full to your use of the Beet Guru App for third party owned plant varieties.
20. The Beet Guru App contains promotional information about third party products and services and links to (and frames of) third party websites. Beet Guru does not endorse third party websites or third party products and services and has no liability in respect of your dealings with third parties. You maintain full responsibility for your dealings with third parties and your use of third party websites, applications, products or services. If Beet Guru assists you with a third party purchase; or with the use of or purchase of a third party application, product or service, we do so in our sole capacity as agent for the third party.
21. You must not without our permission:
  - a) use or copy any material from the Beet Guru App, including, but not limited to, onto other websites or in other mobile applications; or
  - b) frame any of the Beet Guru App onto your own or another person's website or mobile application.

#### **Limitation of Liability**

22. You assume all responsibility and risk with respect to your use of the Beet Guru App. The Beet Guru App is available "as is,"

and "as available". You understand and agree that, to the fullest extent permitted by law, we disclaim all warranties, representations and endorsements, express or implied, with regard to the site, including, without limitation, implied warranties of title, merchantability, non-infringement and fitness for a particular purpose. We do not warrant use of the site will be uninterrupted or error-free or that errors will be detected or corrected. We do not assume any liability or responsibility for any computer viruses, bugs, malicious code or other harmful components, delays, inaccuracies, errors or omissions, or the accuracy, completeness, reliability or usefulness of the information disclosed or accessed through the Beet Guru App. We have no duty to update or modify the Beet Guru App and we are not liable for our failure to do so. In no event, under no legal or equitable theory (whether tort, contract, strict liability or otherwise), shall we or any of our respective employees, directors, officers, agents or affiliates, be liable hereunder or otherwise for any loss or damage of any kind, direct or indirect, in connection with or arising from the Beet Guru App, the use of the Beet Guru App or our agreement with you concerning the Beet Guru App, including, but not limited to, compensatory, direct, consequential, incidental, indirect, special or punitive damages, lost anticipated profits, loss of goodwill, loss of data, business interruption, accuracy of results, or computer failure or malfunction, even if we have been advised of or should have known of the possibility of such damages. If we are held liable to you in a court of competent jurisdiction for any reason, in no event will we be liable for any damages in excess of NZ\$50.00. If any limitation on remedies, damages or liability is prohibited or restricted by law, we shall remain entitled to the maximum disclaimers and limitations available under these Terms of Use, at law and/or in equity.

#### Disclaimers

23. Commentary and other materials available on the Beet Guru App are not intended to amount to advice on which reliance should be placed. We make no representation or warranty, express or implied, that information and materials on the Beet Guru App are correct, complete, accurate, up-to-date, or fit for a particular purpose or of a particular quality. We are not liable in any way (including negligence, tort and equity) to any person in connection with this information; from any reliance placed on such information or materials by any user of the Beet Guru App, or by anyone who may be informed of any of its contents; for any performance or quality issues of, defect in or deterioration or failure of crops; for errors, omissions, loss, costs, loss of income or profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages. Reliance on this information is at your own risk. Always use professional advice for critical work or where you are unsure of any information. If you receive information from the Beet Guru app that has been generated or forwarded by a retailer of Agricom's products, that retailer is entitled to rely on clauses 22 to 27 of these Beet Guru Terms of Use as between you and the retailer, as if the retailer was Agricom.
24. You assume sole responsibility for results obtained from the use of the Beet Guru App, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Beet Guru App, or any actions taken by us at your direction.
25. We do not warrant that the Beet Guru App will be compatible with all hardware and software which you may use. We shall not be liable for damage to, or viruses or other code that may affect, any equipment (including but not limited to your mobile device), software, data or other property as a result of your download, installation, access to or use of the Beet Guru App or your obtaining any material from, or as a result of using, the Beet Guru App. We shall also not be liable for the actions of third parties.
26. To the fullest extent permitted by law, we make no warranties (express or implied), and make no representations, with respect to:

- a) the availability of our websites, mobile apps, website functions and or mobile App functions for your use;
- b) inability to access or use our websites or mobile apps due to lack of network coverage or connectivity;
- c) website and mobile App disruptions, defects and technical errors that may occur from time to time;
- d) viruses and other harmful elements that may be present on websites, software and servers and mobile apps; and
- e) third party websites, applications, products and services.

#### Indemnity

27. You agree to indemnify and hold us and each of our affiliates, successors and assigns, and their respective officers, directors, employees, agents, representatives, licensors, advertisers, suppliers, and operational service providers harmless from and against any and all losses, expenses, damages, costs and expenses (including lawyers' fees), resulting from your use of the Beet Guru App and/or any violation of the terms of this Agreement. We reserve the right to assume the exclusive defence and control of any demand, claim or action arising hereunder or in connection with the Beet Guru App and all negotiations for settlement or compromise. You agree to fully cooperate with us in the defence of any such demand, claim, action, settlement or compromise negotiations, as requested by us.

#### Independence from Platforms

28. The Beet Guru App is independent of any platform on which it is located. The Beet Guru App is not associated, affiliated, sponsored, endorsed or in any way linked to any platform operator, including, without limitation, Apple, Google or Android (each being a "Platform").
29. Your download, installation, access to or use of the Beet Guru App is also bound by the terms and conditions of the Platform.
30. You and we acknowledge that these Terms of Use are concluded between you and us only, and not with a Platform, and we, not those Operators, are solely responsible for the Beet Guru App and the content to the extent specified in these Terms of Use.
31. The license granted to you for the Beet Guru App is limited to a non-transferable license to use the Beet Guru App on a mobile device that you own or control and as permitted by these Terms of Use.
32. We are solely responsible for providing any maintenance and support services with respect to the Beet Guru App as required under applicable law. You and we acknowledge that a Platform has no obligation whatsoever to furnish any maintenance and support services with respect to the Beet Guru App.
33. In the event of any failure of the Beet Guru App to conform to any applicable warranty, you may notify the relevant Platform and that Platform will refund the purchase price for the Beet Guru App (if any purchase price has been paid) to you; and, to the maximum extent permitted by applicable law, that Platform will have no other warranty obligation whatsoever with respect to the Beet Guru App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our sole responsibility.
34. You and we acknowledge that we, not the relevant Platform, are responsible for addressing any claims of you or any third party relating to the Beet Guru App or your possession and/or use of the Beet Guru App, including, but not limited to:
  - (i) any claim that the Beet Guru App fails to conform to any applicable legal or regulatory requirement; and

- (ii) claims arising under consumer protection or similar legislation.

- 35. You and we acknowledge that, in the event of any third party claim that the Beet Guru App or your possession and use of the Beet Guru App infringes that third party's intellectual property rights, we, not the relevant Platform, will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim; provided such infringement was caused by us.
- 36. You must comply with any applicable third party terms of agreement when using the Beet Guru App (e.g. you must ensure that your use of the Beet Guru App is not in violation of your mobile device agreement or any wireless data service agreement).
- 37. You and we acknowledge and agree that the relevant Platform, and that Platform's subsidiaries, are third party beneficiaries of these Terms of Use, and that, upon your acceptance of these Terms of Use, that Platform will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you as a third party beneficiary.

### **New Zealand Law applies**

- 38. These App Terms of Use are governed by and construed in accordance with the laws of New Zealand without giving effect to any principles of conflicts of law. You and us consent to the exclusive jurisdiction of the New Zealand courts in connection with any legal action that may arise in relation to your use of our websites, our mobile apps and or these App Terms of Use.

### **Changes to the Beet Guru App**

- 39. We are committed to ensuring that the Beet Guru App is as useful and efficient as possible. For that reason, we reserve the right to make changes to the Beet Guru App or to charge for its services, at any time and for any reason. We will never charge you for the Beet Guru App or its services without making it very clear to you exactly what you are paying for.
- 40. We may change or update the Beet Guru App and anything described in it without notice to you. If the need arises, we may suspend access to the Beet Guru App, or close it indefinitely.

### **Changes to the App Terms of Use**

- 41. We may make changes to these Terms of Use at any time without notice to you by posting changes on the [www.agricom.co.nz](http://www.agricom.co.nz) website (the "Website") or by updating the Beet Guru App to incorporate the new terms of use. You are responsible for regularly reviewing information posted online to obtain timely notice of such changes. Your continued use of the Beet Guru App after changes are posted constitutes your acceptance of the amended Terms of Use.

### **Contact**

- 42. Any end-user questions, complaints or claims should be directed to:  
Agricom  
PO Box 3761  
Christchurch New Zealand  
Telephone number: 0800 183 358  
E-mail address: [info@beetguru.co.nz](mailto:info@beetguru.co.nz)

**The Beet Guru App is owned and operated by PGG Wrightson Seeds Ltd trading as Agricom (referred to as "Agricom", "we" and "us" in these Terms of Use).**

**These Beet Guru App Terms of Use were last updated on 17 February 2017**

### **Links to:**

**Website Terms of Use - <http://www.agricom.co.nz/about/terms-of-use>**