

The Akvo Foundation

Data Processing Agreement

May 2018

Document Control

Version History

Version	Status	Reason for change	Changes done by
1	Draft, March 2018		Lynn Brannstrom
2	Draft, 26 April 2018	Discussion with Hans & LarsS	Lynn Brannstrom
2.1	Draft, 17 May 2018	Updates made for final version prep	Lynn Brannstrom
3	Final, 22 May 2018	Liability updated	Lynn Brannstrom

NOTE: *This Data Processing Agreement (the “**Agreement**”) forms part of a contract of service with the Processor through the acceptance of the term of service by the Controller (the “**Principal Agreement**”) on the Akvo Foundation’s website (www.akvo.org). This Agreement shall reflect the parties’ agreement with regard to the Processing of Personal Data. In the course of providing the Services to the Controller pursuant to the Agreement, The Akvo Foundation may Process Personal Data on behalf of the Controller and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.*

How do I get this Agreement signed?

As a Controller, in order to sign this agreement, you must:

- a) Request or download a copy of the agreement.
- b) Complete the information on Page 2 and Page 16 of the Agreement and sign in the signature box on Page 16.

Upon the Akvo Foundation's receipt of the validly completed and signed Agreement, this Agreement shall be in full force and effect.

How does this Agreement apply?

If the Controller signing this Agreement is a user or partner of the Akvo Foundation, this Agreement forms part of a contract of service with the Akvo Foundation.

If the Controller signing this Agreement is not a user or partner of the Akvo Foundation, at the date of signature, this Agreement is not valid and is not legally binding.

Questions?

We are here to help! Just drop us an email on dpa@akvo.org detailing your queries.

This Agreement is entered into between the Akvo Foundation and

.....

on the (the "Commencement Date")

PARTIES

- (1), incorporated and registered in.....with company registration number.....and having its registered office at....., ("Controller");
- (2) **The Akvo Foundation**, incorporated and registered in The Netherlands, with **Chamber of Commerce registration number in The Hague (KvK): 27327087 and Value Added Tax number (VAT/BTW): NL819794727B01** and having its registered office at **'s-Gravenhekje 1A1011 TG, Amsterdam**, ("Processor")

Each individually referred to as the "Party" and jointly referred to as the "Parties".

RECITALS

- A. **WHEREAS** the Parties have agreed that the Controller will act as the sole Controller of the Personal Data and the Processor renounces to any rights it may have to act as a data controller of the Personal Data held by the Controller;
- B. **WHEREAS** the Parties have agreed that it may be necessary for the Processor to Process certain Personal Data on behalf of the Controller;
- C. **WHEREAS** in light of this Processing, the Parties have agreed to enter into this Agreement to address the compliance obligations imposed upon the Controller pursuant to the Applicable Law; and
- D. **WHEREAS** the parties agree to the provision of the services under the Akvo Foundation's [Terms of Service](#) may qualify as commissioned data Processing as per Art. 17 of the European Data Protection Directive 95/46/EC until the 25th May 2018 and, as from the 25th May 2018, sec. 28 of the General Data Protection Regulation 2016/679.

- E. **WHEREAS** the Parties agree that this Agreement shall render any and all other previous agreements entered into between the Controller and the Processor in relation to data protection, before the date of this Agreement null and void.

1. DEFINITIONS AND INTERPRETATION

1.1. The following terms shall have the following meanings:

- Agreement:** means this agreement, including all schedules, notifications and all notices to this agreement;
- Applicable Law:** means the relevant data protection and privacy laws to which the Parties are subject, including the Data Protection Directive until the 25 May 2018 and, as from 25 May 2018, the General Data Protection Regulation 2016/679
- Data Subject:** means the identified or identifiable person to whom Personal Data relates;
- Directive:** means Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the Processing of personal data and on the free movement of such data (*Official Journal L 281, 23/11/1995 P.0031-0050*);
- Personal Data:** means "any information relating to an identified or identifiable natural person (data subject); an identifiable person is one who can be identified, directly or indirectly, in particular by reference identifier such as a name, an identification number, location data, an online identifier or the one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person", as defined under the General Data Protection Regulation 2016/679 and includes any equivalent definition in the Applicable Law;
- Process, Processing or Processed:** means "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available,

alignment or combination, restriction, erasure or destruction", as defined under the General Data Protection Regulation 2016/679 and includes any equivalent definition in the Applicable Law;

Purpose: means the services and the associated Processing of Personal Data as defined in Schedule 1 to this Agreement;

Services: means the software as a service (SaaS) offered by the Akvo Foundation and having a variety of resources including but not limited to other code and documentation developed by the Akvo Foundation, support, training and other services offered;

Terms of Service: means the legal agreement between the Controller as the user and the Processor, that governs the Controller's limited, non-exclusive and terminable right to the use of Akvo Products and Services as defined in the Terms of Service.

2. APPOINTMENT

- 2.1. The Processor is appointed by the Controller to Process such Personal Data for and on behalf of the Controller as is necessary to provide the Processing services, and as may subsequently be agreed to by the Parties in writing. Any such subsequent agreement shall be subject to the provisions of this Agreement.
- 2.2. The Controller shall Process Personal Data in accordance with the requirements of the Applicable Laws. For the avoidance of doubt, the Controller's instructions for the Processing of Personal Data shall comply with the Applicable Law and the Processor reserves the right to refuse such instructions if not in compliance with the Applicable Law. The Controller shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which it acquires the Personal Data.

3. DURATION

- 3.1. This Agreement shall commence on the Commencement Date and shall continue in full force and effect until the termination of the Purpose as defined in Schedule 1.

- 3.2. Notwithstanding Clause 3.1 and in those instances where the Purpose consists of a number of Processing activities, the Parties may agree to terminate part of the Processing activities forming part of the Purpose, in which case such termination shall take effect on the date agreed by the Parties in writing and shall not affect the validity of the remaining Processing activities forming part of the same Purpose.

4. DATA PROCESSING

- 4.1. The Processor shall process Personal Data for the Purpose as described in the Terms of Service, as entered into between the Parties, on behalf of and under the direction of the Controller and as summarized in Schedule 1 hereunder.
- 4.2. The data will be, where possible, processed within a Member State of the European Union (EU) or within a Member State of the European Economic Area (EEA). Transfers of personal data to countries outside the EU/EEA requires the Processor to ensure that processing takes place within the restrictions and in compliance with the technical and organizational measures set out in clause 6 and ensure compliance with Applicable Laws.
- 4.3. Depending on how the Controller chooses to use the Service, the subject matter of processing of personal data may cover the following types/categories of data:
- *Internal*: knowledge & belief, authenticating, preference.
 - *Historical*: Life history.
 - *External*: Identifying (name, username, ID card), ethnicity, sexual, behavioural, demographic, medical & health, physical characteristics.
 - *Financial*: Account, ownership, transactional, credit.
 - *Social*: Professional (salary, job title), criminal, public life, family, social network, communication.
 - *Tracking*: Computer device (mac address, ip address, android IMEI), contact (email address, telephone number), location (GPS coordinates, country)
- 4.4. The group of Data Subjects affected by the Processing of their personal data under this Agreement includes end-users of the Controller's websites which make use of the Services provided by the Processor, as well as the Controller's beneficiaries whose data is collected with Services provided by the Processor.

5. TECHNICAL AND ORGANIZATIONAL MEASURES

- 5.1. The Processor shall establish data security in accordance with the Applicable Laws. The measures to be taken must guarantee a protection level appropriate to the risk concerning confidentiality, integrity, availability and resilience of the systems. The state of the art, implementation costs, the nature, scope and purposes of Processing, as well as the probability of occurrence and the severity of the risk to the rights and freedoms of natural persons, must be taken into account.
- 5.2. The Processor has laid down the technical and organizational measures in Schedule 2 of this Agreement.
- 5.3. The technical and organisational measures are subject to technical progress and further development. In this respect, it is permissible for the Processor to implement alternative adequate measures. In so doing, the security level of the defined measures must not be reduced.

6. RECTIFICATION, RESTRICTION AND ERASURE OF DATA

- 6.1. The Processor may not on its own authority rectify, erase or restrict the Processing of Personal Data that is being processed on behalf of the Controller (unless this is required by law or the Processor's Term of Service), but shall only do so on documented instructions from the Controller and in accordance to data retention rules associated to the Controller/Processor contract.
- 6.2. If a Data Subject should apply directly to the Processor to request the rectification, erasure, or restriction of his Personal Data, the Processor must forward this request to the Controller without delay.

7. QUALITY ASSURANCE AND OTHER OBLIGATIONS OF THE PROCESSOR

- 7.1. The processor shall comply with all statutory requirements applicable when carrying out this Agreement. In particular, the Processor ensures compliance with the following requirements:
 - a. The Processor has appointed a part time Data Compliance Coordinator, who shall perform such duties in compliance with Applicable Laws. The Data Compliance Coordinator can be contacted via e-mail on privacy@akvo.org.

- b. The Processor shall keep Personal Data logically separate to data Processed on behalf of any other third party;
- c. The Processor and any person acting under its authority shall process the Personal Data in accordance with the Processor's Term of Service and on documented instructions from the Controller, including with regard to transfers of Personal Data to a third country or international organisation, unless required to do so by Union or Member State law to which the Processor is subject; in such a case, the Processor shall inform the Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
- d. The Processor entrusts only such persons (whether legal or natural) with the data Processing under this Agreement who have given an undertaking to maintain confidentiality and have been informed of any special data protection requirements relevant to their work;
- e. The Processor and the Controller shall cooperate, on request, with the supervisory authority in performance of its tasks;
- f. The Processor shall inform the Controller immediately of any inspections and measures conducted by the supervisory authority, insofar as they relate to the Processing of the Controller's data under this Agreement; this also applies if the Processor is under investigation or is party of an investigation by a competent authority in connection with the Processing of the Controller's data under this Agreement;
- g. The Processor shall undertake reasonable efforts to support the controller if the Controller is subject to an inspection by the supervisory authority, an administrative or summary offence or criminal procedure, a liability claim by a Data Subject or by a third party or any other claim in connection with this Agreement;
- h. The Processor shall verify the technical and organisational measures conducted as part of the Controller's monitoring rights referred to Schedule 2 of this Agreement.

8. MONITORING RIGHTS OF THE CONTROLLER

- 8.1. The Controller has the right, after consultation with the Processor, to carry out inspections or to have them carried out by an auditor to be designated in each individual case. The Controller has the right to convince itself of the compliance with this Agreement by the Processor in its business operations by means of random checks, which are to be announced in advance with good time. These rights of the Controller shall not extend to facilities which are

operated by sub-processors, sub-contractors or any third parties which the Processor may use to attain its Purpose and provide its Services. The Processor shall ensure that the processing activities carried out by any sub-processors, sub-contractors or any third parties which the Processor may use to attain its Purpose and provide its Services meet the requirements laid down in this Agreement and in Applicable Law.

- 8.2. The Processor shall ensure that the Controller is able to verify compliance with the obligations of the Processor in accordance with the Applicable Laws. The Processor undertakes to provide to the Controller all necessary information on request and, in particular, to demonstrate the execution of the technical and organisational measures as mentioned in Schedule 2 within a reasonable timeframe.
- 8.3. Evidence of the implementation of any measures in this regard may also be presented in the form of up-to-date attestations, reports or extracts thereof from independent bodies (e.g. external auditors, internal audit, the data protection officer, the IT security or data protection audit or by measures provided by law).

9. NOTIFICATION OF SECURITY BREACHES BY THE PROCESSOR

- 9.1. The Processor shall assist the Controller in complying with the statutory obligations regarding the security and protection of personal data and shall make appropriate documentation in this regard. This includes, in particular, the obligation:
 - a. To ensure an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - b. To notify the Controller in the most expedient time possible under the circumstances and without unreasonable delay and, where feasible, not later than seventy-two (72) hours after having become aware of any accidental, unauthorised, or unlawful destruction, loss, alteration, or disclosure of, or access to, Personal Data ("Security Breach"). In consultation with the Controller, the Processor shall take appropriate measures to secure the data and limit any possible detrimental effect on the Data Subjects;

- c. To co-operate with the Controller and provide the Controller with any information which the Controller may reasonably request relating to the Security Breach. The Processor shall investigate the Security Breach and shall identify, prevent and make reasonable efforts to mitigate the effects of any such Security Breach and, with the Controller's prior agreement, to carry out any recovery or other action necessary to remedy the Security Breach;
- d. To assist the Controller by appropriate measures with regard to the Controller's obligation to inform Data Subjects and competent authorities in case of a Security Breach; and
- e. To assist the Controller with regard to the Controller's obligation to provide information to the Data Subject concerned and to immediately provide the Controller with all relevant information in this regard.

10. AUTHORITY OF THE CONTROLLER TO ISSUE INSTRUCTIONS

- 10.1. The Personal Data may only be handled under the terms of this Agreement, in alignment with the Processor's Terms of Service, and under the instructions issued by the Controller. Under the terms of this Agreement, the Controller retains a general right of instruction as to the nature, scope and method of data Processing, which may be supplemented with individual instructions. Any changes to the subject-matter of the Processing and any changes to procedure must be agreed and documented together. The Processor may only pass on information to third parties or to the Data Subject with the prior written consent of the Controller.
- 10.2. The Processor will only accept instructions via electronically communicated text in writing or in text form. The Processor must not use the data for any other purpose and is particularly forbidden to disclose the data to third parties. No copies or duplicates may be produced without the knowledge of the Controller. This does not apply to backup copies or troubleshooting where these are required to assure proper data Processing, or to any data required to comply with statutory retention rules.
- 10.3. The Processor shall inform the Controller without delay, if it believes that there has been infringement of legal data protection provisions. The Processor may then postpone the execution of the relevant instruction until it is confirmed or changed by the Controller's representative.

11. DELETION AND RETURN OF PERSONAL DATA

- 11.1. Upon completion of the contractual work as laid down in the Principal Agreement or when requested by the Controller, and within a reasonable time which shall not exceed 30 calendar days, the Processor must return to the Controller all documents in its possession and all work products and data produced, or delete them in compliance with the Applicable Law with the prior consent of the Controller. The same applies to any test data. The deletion log must be presented upon request.
- 11.2. Electronic documentation intended as proof of proper data Processing must be kept by the Processor beyond the termination of the relationship between the Parties and this Agreement, in accordance with relevant retention periods relevant to the Controller's contract and timeframes corresponding therein. The Processor may hand such documentation over to the Controller after expiry of the Agreement, upon request by the Controller.
- 11.3. The Processor shall, to the extent legally permitted, promptly notify the Controller if the Processor receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making. The processor must assist the Controller in providing subject access and allowing data subjects to exercise their rights under the applicable law.
- 11.4. Taking into account the nature of the Processing, the Processor shall assist Controller by appropriate technical and organisational measures, insofar as the right to be forgotten is possible, for the fulfilment of the Controller's obligation to respond to a Data Subject's request under Applicable Law. The obligation to delete the Data Subject's data shall, at all times, remain with the Controller. For the avoidance of doubt, the Processor will not undertake any data deletion efforts for and on behalf of the Controller without prior written permission.

12. INDEMNIFICATION

- 12.1. The Controller will indemnify and keep indemnified the Processor in respect of all liabilities, costs and expenses suffered or incurred by the Processor in its capacity as processor of the data of the Controller arising from any Security Breach in the terms of this Agreement or any negligent act or omission by the Controller in the exercise of the rights granted to it under the Applicable Law provided that:

- a. The Processor, within reasonable time, notifies the Controller of any actions, claims or demands brought or made against it concerning any alleged Security Breach;
- b. The Processor will not compound, settle or admit to any actions, claims or demands without the consent of the Controller except by order of a court of competent jurisdiction;
- c. The Controller shall be entitled at its own cost to defend or settle any proceedings;
- d. The Processor shall not have acted of its own accord and independently of the instructions given to it by the Controller in its role as data processor in accordance with the provisions of this Agreement, except in specific situations as laid down in the Processor's Term Service;
- e. This indemnity shall exclude any loss that has arisen out of negligence or willful act, default or omission of the Processor, its employees, contractors, sub-contractors or any other person outside the Controller's control;
- f. Nothing in this Agreement shall restrict or interfere with the Controller's rights against the Processor or any other person in respect of contributory negligence.

The Processor's right to claim damages shall be forfeited if the Processor fails to give written notice of any damages that may be sustained as aforesaid within ten (10) days from the occurrence thereof or commences to make good such damages before written notice is given as aforesaid.

- 12.2. The Processor shall indemnify and keep indemnified the Controller in respect of all and any claims, legal proceedings or actions brought against the Controller exclusively arising as a result of the negligence or willful default of the Processor in Processing Personal Data in terms of this Agreement. The indemnity referred to shall apply subject to the following:
- a. The Controller, within reasonable time, notifies the Processor of any actions, claims or demands brought or made against it concerning any alleged Security Breach;
 - b. The Processor shall be entitled at its own cost to defend or settle any proceedings;
 - c. Such liabilities, costs and expenses shall be capped at a level of ten thousand Euros (€ 10,000) whether in respect of a single claim or a

series of claims arising from the same incident except in the event of death or personal injury where there shall be no limit; and

- d. Nothing in this Agreement shall restrict or interfere with the Controller's rights against the Processor or any other person in respect of contributory negligence.

13. SUB-PROCESSING

- 13.1. **"Sub-Processing"**, in the meaning of this Agreement, does not include ancillary services, such as telecommunication services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of that Processing equipment. The Processor shall, however, be obliged to make appropriate and legally binding contractual arrangements and take appropriate inspection measures to ensure the data protection and the data security of the Controller's data, even in the case of outsourced ancillary services to Sub-Processors.
- 13.2. The Controller agrees to the commissioning of sub-processors on the condition of a contractual agreement in accordance with applicable data protection laws. For a list of current sub-processors go to:
<https://akvo.org/help/third-parties/>
- 13.3. Outsourcing to further Sub-Processors or changing any existing Sub-Processors is permissible if the Processor ensures compliance of such Sub-Processor, to Applicable Laws. In addition, the following provisions apply:
 - a. The transfer of Personal Data to the Sub-Processor and the Sub-Processor's commencement of the data Processing shall only be undertaken after compliance with all requirements has been achieved;
 - b. If the Sub-Processor provides the agreed service outside the EU/EEA, the Processor shall ensure compliance with Applicable Laws; and
 - c. The Processor shall impose on the Sub-Processor the same data protection obligations as set out in this Agreement, in particular with regard to the provision of sufficient guarantees to implement appropriate technical and organisational measures in such manner that the Processing will meet the requirements of the Applicable Law.
- 13.4. With respect to each Sub-Processor, the Processor will before the Sub-Processor first Processes any data of the Controller, carry out adequate due diligence to ensure that the Sub-Processor is capable of providing the

level of protection for the Personal Data required by this Agreement and shall ensure that the agreement between the the Processor and the relevant Sub-Processor, is governed by a written contract including terms which offer at least the same level of protection for the Controller as those set out in this Agreement and meets the requirements of [article 28\(3\) of the GDPR](#).

14. MISCELLANEOUS

- 14.1. With effect from 25 May 2018, upon the Controller's request, the Processor shall provide the Controller with reasonable cooperation and assistance needed to fulfil the Controller's obligation under the General Data Protection Regulation to carry out a data protection impact assessment related to the Controller's use of the Processor Services, to the extent that the Controller does not otherwise have access to the relevant information, and to the extent such information is available to the Processor.
- 14.2. If any variation is required to this Agreement as a result of a change in the Applicable law, then either the Party may provide written notice to the other party of that change in law. The Parties will discuss and negotiate in good faith any necessary variations to this Agreement. The parties will promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the relevant requirements.
- 14.3. Clauses and other headings in this Agreement are for convenience of reference only and shall not constitute a part of or otherwise affect the meaning or interpretation of this Agreement. Schedules to this Agreement shall be deemed to be set forth *verbatim* herein.
- 14.4. This Agreement, including the Schedules attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements (excluding the Terms of Service), understandings, negotiations and discussions of the Parties.
- 14.5. The provisions of this Agreement are severable. If any phrase, clause or provision is invalid or unenforceable in whole or in part, such invalidity or unenforceability shall affect only such phrase, clause or provision, and the rest of this Agreement shall remain in full force and effect.
- 14.6. Any notice, letter or other communication contemplated by this Agreement shall be communicated in writing via registered mail to the registered addresses of the Parties or via electronic mail.
- 14.7. The provisions of this Agreement shall endure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

14.8. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

AS WITNESS the hands of the duly authorised representatives of the Parties the day month and year first above written:

SIGNED on behalf of

Signature:.....

.....

Name:.....

Position:.....

SIGNED on behalf of

Signature:.....

The Akvo Foundation

Name:.....

Position:.....

SCHEDULE 1**Description of Processing Operations****The Purpose**

The Akvo Foundation offers various tools as SaaS (Software as a Service) to partners. The tools include, but are not limited to, mobile survey data collection, project reporting, data visualisation, sensor hardware and website creation. The Akvo Foundation gives it's partners the big picture by connecting all phases of their projects from collection of data, understanding their data, making informed decisions and sharing their data with the world.

For more information on what data is collected and the security measure taken to protect this data refer to the Akvo Foundation's Terms of Service and [Privacy Policy](#).

SCHEDULE 2

Technical and Organizational Measures

The Processor warrants and undertakes in respect of all Personal Data that it Processes on behalf of the Controller that, at all times, it maintains and shall continue to maintain appropriate and sufficient technical and organisational security measures to protect such Personal Data or information against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorized disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing.

Such measures shall include, but are not limited to, physical access control, logical access control (i.e. non-physical access control measures such as passwords), data access control, data transfer control, input control, availability measures, and data separation; in particular at least the measures set out in the the Akvo Foundation's [Privacy Policy](#).

The Processor shall provide the Controller, upon request, with adequate proof of compliance (e.g. the relevant parts of the Processor's agreements with its subcontractors).

For more detailed information on the latest state of the art measures adopted by our hosting providers, please refer to the following links:

Google <https://cloud.google.com/security/>

CloudVPS <https://www.cloudvps.com/about-cloudvps/certifications>

Amazon <https://aws.amazon.com/security/>

Elephant SQL https://www.elephantsql.com/security_policy.html

The Akvo Foundation's sub-processors are listed here: <https://akvo.org/help/third-parties/>