

The Akvo Foundation

**(Stichting Akvo with it's incorporated
organisational entities)**

General Terms of Service

September 2018

Document Control

Version History

Version	Status	Reason for change	Changes done by
2	Draft, June 2018		Lynn Brannstrom
2.1	Final, September 2018	Changes to billing, and referring to SaaS terms, arbitration notification, health & safety responsibility for onsite	Lynn Brannstrom

Posted: 5 October 2018

Effective: 5 October 2018

Thank you for working with the Akvo Foundation!

The Services are provided by the Akvo Foundation. "Akvo" means Stichting Akvo (Akvo Foundation with its incorporated organisational entities) located at 's-Gravenhekje 1A, 1011 TG Amsterdam, The Netherlands.

If you are using the Services on behalf of an organisation, you are agreeing to these Terms, **including the binding arbitration provision contained in section 13**, for that organisation and promising that you have the authority to bind that organisation to these Terms. In that case, "you" and "your" will refer to that organisation (also referred to as the "Partner").

Akvo and the Partner is individually a "Party" or collectively "Parties".

For the purpose of the Akvo General Terms of Service the "Agreement" shall include any individual Agreement concluded between Parties defining the scope of authorised services and deliverables ("Services"), including software-as-a-service (SaaS). As part of the Akvo General Terms of Service, the Akvo SaaS Terms of Service are applicable on software-as-a-service as described in the Agreement.

The following documents shall be deemed to form and be read and construed as part of the Agreement concluded between parties, in the following order of precedence:

- the Agreement
- the Akvo Foundation General Terms of Service
- the Akvo SaaS Terms of Service
- the Akvo Data Processing Agreement
- the Akvo Technical Proposal including services pricing.

For the purpose of the Agreement "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, inventions, products, computer programs (both source and object

code), developments, drawings, notes, documents, reports, business processes, information, frameworks, advice and material Akvo makes, conceives or develops, alone or in collaboration with others including any summary, abstract, portion or derivation thereof.

Separate software-as-a-service or SaaS Terms of Service are available for using our software services and tools: [SaaS Terms of Service](#)

1. Services

- 1.1. The scope of authorised services and deliverables to be performed by Akvo ("Services") will be described in the Agreement explicitly referencing to the Akvo General Terms of Service incorporated herein by reference.
- 1.2. You must follow any policies made available to you within the Services.
- 1.3. The Services described in the Agreement are expressly not the internet software-as-a-service ("SaaS") which Akvo provides, including but not limited to: Akvopedia, Akvo Flow & Caddisfly, Akvo Lumen, Akvo Really Simple Reporting ("Akvo RSR") and Akvo Sites. The terms for software-as-a-service are contained in the separate [Akvo SaaS Terms of Service](#).

2. Billing and payments

- 2.1. Akvo's budget for performing the Services is described in the Agreement, referred to as "Total Budget".
- 2.2. Akvo fees are based on the costs of the software tools, services and pre-approved expenses. Each agreement has a detailed

breakdown of the fees. All Akvo's fees are in Euro and are excluding any taxes (service tax, VAT, withholding tax etc). Akvo will submit invoices for fees and expenses.

- 2.3. In addition to Fees, Reimbursable Expenses, any applicable taxes incurred in connection with the Services other than taxes imposed on Akvo's income ("Taxes") will be billed to, and paid by, the Partner.
- 2.4. The Partner shall pay each undisputed invoice within thirty (30) days of the date of the invoice. The Partner shall notify Akvo in writing of any dispute regarding all or part of an invoice within twenty (20) business days from receipt of the invoice. In the event that the Partner does not timely provide such notice, the entire invoice shall be deemed valid. The undisputed portion of an invoice shall be paid in accordance with the procedures described herein. In the event the Partner fails to pay in accordance with those procedures, Akvo may, at its option, terminate the Agreement pursuant to Article 8 or suspend performance until payment is made.
- 2.5. A finance charge of 1.5% per month on the outstanding balance of an invoice will be charged on past due amounts (except on any fees that are disputed in by the Partner in accordance with Section 2.4). Payments by the Partner will thereafter be applied first to accrued interest and then to the unpaid principal balance.

3. Independent contractor

- 3.1. It is expressly agreed that Akvo shall perform the Services under the Agreement as an independent contractor with responsibility for its employees, subcontractors, suppliers and agents, and sole responsibility for the means and methods of performance and without direction or control by the Partner.
- 3.2. For onsite training, the Partner has the responsibility of informing Akvo employees, subcontractors, suppliers or agents of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the training or Partner's premises.
- 3.3. Nothing in the Agreement shall be constructed as creating a single enterprise, agency, joint venture or employer-employee relationship between the Parties hereto, and neither Party shall represent itself to any third party to be an owner, officer, agent or employee of the other Party.

4. Ownership of Work Product and Deliverables

- 4.1. Akvo is an organisation that expressly works with Work Products and makes Work Product public under several different open source licenses for computer software and other open licenses, including but not limited to, the GNU Affero General Public License and the Creative Commons licenses as per Akvo's Licensing and Copyright policy information in Section 5 of these Terms. For more information on licensing and copyright go to our '[Licensing and copyright](#)' policy page.
- 4.2. The Partner agrees to promptly disclose and describe to Akvo any and all Work Products that the Partner is sharing with Akvo, which should not be a joint Work Product published under an open source license or a Creative Commons license. The Partner furthermore

agrees to mark such Work Products clearly with “Not a Contribution”.

5. Licensing and copyright

- 5.1. Do note that Akvo® is a registered trademark of Stichting Akvo (Akvo Foundation). These Terms do not grant you any rights to use the Akvo Foundations trademarks, logos, domain names, or other brand features. If you are seeking permission to use the Akvo Foundation trademarks, logos, service marks, trade dress, slogans, screenshots, copyrighted designs or other brand features, please contact info@akvo.org.
- 5.2. The services, software and technology we use to provide our Services are protected by copyright, trademark, and other laws of both the Netherlands and other countries. The Akvo Foundation's trademarks include, but are not limited to, the names Akvo®, Akvo.org™, Really Simple Reporting™, Akvo RSR™, Akvopedia™, Akvo Caddisfly™ and Akvo Lumen™. The trademarks: Field Levels Operation Watch™, FLOW™, Akvo FLOW™ and Akvo Flow™, belong to [Water for People](#) and are used by Akvo Foundation with permission.
- 5.3. You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion or use of, or access to Akvo Software or Services , with the following exceptions:
 - 5.3.1. For images you agree to share them on the terms of the **Creative Commons Attribution-noncommercial-sharealike 3.0 Unported License [CC-BY-NC-SA]** (or later versions as applicable), which can be found in its entirety here: <https://creativecommons.org/licenses/by-nc-sa/3.0/> and **Creative Commons Attribution-Noncommercial-Share Alike 3.0 Plus Netherlands License (CC-BY-NC-SA Plus)**.

5.3.2. For data you agree to share it on the terms of the following two license agreements:

Creative Commons Attribution-sharealike 3.0 Unported License [CC-BY-SA] (or later versions as applicable), which can be found in its entirety here:

<https://creativecommons.org/licenses/by-sa/3.0/>

Open Database License 1.0 [odbl] (or later versions as applicable), which can be found in its entirety here:

<https://opendatacommons.org/licenses/odbl/1.0/>

The Akvo Foundation's agent for notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail: Copyright Notice c/o Akvo Foundation 's-Gravenhekje 1A 1011 TG Amsterdam Netherlands

By email: info@akvo.org

For more information on licensing and copyright go to our '[Licensing and copyright](#)' policy page.

6. Changes and Delays

6.1. If changes in the nature or extent of the Services requested by the Partner in writing are necessitated by changing conditions of law or professional standards, Force Majeure Events, scheduled delays due to lack of Client Cooperation (as defined below), or events beyond Akvo's reasonable control, cause an increase or decrease in the cost of, or the time required for, performance of any part of the Services in the Agreement, the Parties, shall in good faith, negotiate an equitable adjustment in the price to be paid, the delivery schedule, or both, and shall modify the affected Agreement accordingly.

6.2. For the purpose of the Akvo General Terms of Service, "Force Majeure Events" include strike, lockout, earthquake, hurricane,

flood, fire or other acts of nature, war, rebellion, civil disorders, acts of terrorism, laws, regulations, acts of civil or military authorities (including the denial or cancellation of any export or other necessary license), unavailability of materials, carriers, or communication facilities, and any other unforeseeable causes beyond the reasonable control of the Party whose performance is affected (except for financial inability). Any Party so impacted in whole or in part by a Force Majeure Event shall promptly give the other Party notice of the Force Majeure Event, including reasonably full particulars about the event. Both Parties shall use all reasonable efforts to minimize the consequences of any Force Majeure Event.

- 6.3. The Parties acknowledge and agree that Akvo's ability to perform the Services in a timely and cost-effective manner is condition upon its receiving the Partner's reasonable cooperation ("Cooperation"), including but not limited to the Partner's good faith and timely provision to Akvo of information and resources reasonably requested by Akvo in connection with performing the Services under the Agreement. The Partner's failure to provide Cooperation may result in a change to the delivery schedule and in such event, the Parties shall modify the affected Agreement accordingly.
- 6.4. If the Partner cancels or delays a planned work session (such as a kick-off session or training session), less than three (3) weeks in advance, Akvo is entitled to receive a compensation of 25% of the budgeted staff time and 100% of all other costs made (such as flight ticket purchases, etc).
- 6.5. Each Party will give prompt written notice to the other Party whenever a Party observes or becomes aware of any development that affects the scope or timing of the other Party's performance of its obligations hereunder or the Services under the Agreement.

7. Limitations of liability

- 7.1. Except with respect to any indemnification obligations set forth in Section 7 neither party will be liable to the other party for any indirect, incidental, special, punitive or consequential damages (including, but not limited to, a loss of earnings, profits, products, data or goodwill, economic loss, delay, extended overheads, regulatory fines or penalties and all costs and expenses related to regulatory fines or penalties, and business interruption damages) in any action or for any claim or cause of action in contract, tort or any other legal claim or cause of action, whether or not a Party might have been advised of the possibility of such damages.
- 7.2. Except with respect to any indemnification obligations set forth in article 7 each Party's total aggregate liability in any action or for any claim or cause of action in contract, tort or any other legal claim or cause of action related to or arising out of the Agreement, or Akvo's performance of the Services shall be limited to the fees paid or payable pursuant to the Agreement covering the Services or Work Product that gives rise to liability.

8. Indemnification

- 8.1. Both Parties shall indemnify, defend and hold harmless the other Party, its affiliates and their respective officers, directors, employees, agents, successors and assigns (together with each Party, "Indemnified Persons") from and against all claims by a third party for losses, damages, costs or liability of any kind (including expenses and attorneys' fees) arising from, in connection with or relating to gross negligent acts or omissions or wilful misconduct of the Party's personnel in the performance of its obligations under the Agreement including, but not limited to, those that cause bodily injury or death or physical damage to tangible property and any theft or other misappropriation of the Party's or its personnel's information, property of funds by the other Party or the other Party's employees.

- 8.2. The party seeking indemnification under this Section will: (a) notify the indemnifying party in writing within thirty (30) days after the indemnified party receives notice of the claim; (b) give the indemnifying party sole control of the defence and all related settlement negotiations, provided that the indemnifying party shall not settle any claim in hereunder without the indemnified party's written consent if such settlement imposes any liability on the indemnified party, or contains or implies any wrongful action or inaction or any admission of wrongdoing by or with respect to the indemnified party; and (c) provide the indemnifying party with reasonable assistance, at the indemnifying party's sole expense, in the defence of the claim.

9. Termination of services

- 9.1. For the purpose of the Akvo General Terms of Service, "Default" shall mean a Party's breach of a material obligation under the Agreement. In the event of a Default by one Party, the other Party may terminate the Agreement by providing thirty (30) days written notice of termination to the other Party describing the grounds for Default on which the termination is based, provided that the Party receiving the termination notice shall have the right to cure such Default within thirty (30) days from receipt of the notice. If the Party receiving the termination notice does not cure the Default within thirty (30) days, the Agreement will be terminated, or the other party may withhold further services, such as any SaaS being provided under the Agreement.
- 9.2. In the event that the Agreement expires or is terminated for any reason, (i) the Partner shall pay Akvo for the portion of the Services performed and the Reimbursable Expenses and taxes incurred prior to the effective date of termination, (ii) Akvo shall deliver to the Partner any Deliverables and/or Work Product, completed or then in progress, in Akvo's possession: provided, however, that all such deliverables and/or work product delivered to the Partner under this

Section shall be provided to the Partner “as is” and any warranties, expressed or implied, including, without limitation, implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed. The Partner assumes any and all risks associated with any use or dissemination of all or any portion of the deliverables and/or Work Product that is delivered upon termination of the Agreement in accordance with this Section.

- 9.3. The Partner will give prompt written notice to Akvo if the Partner observes or becomes aware of any perceived defect in Akvo’s performance of the Service under the Agreement and Akvo will respond to such notices in accordance with its obligations under the Agreement.

10. Warranties

- 10.1. Akvo warrants to the Partner that: (i) the Services shall be performed in a professional and workmanlike manner and in accordance with the prevailing industry standards by Akvo’s personnel and reasonably believed by Akvo to be competent and fully trained and qualified; (ii) Akvo is the sole and exclusive creator of the Deliverables and Work Product provided to the Partner hereunder, other than contributions of open source or openly licensed Work Products provided by the community surrounding the Work Products which Akvo produce, and Akvo’s performance of its obligations under the Agreement will not violate, infringe or misappropriate upon the intellectual property or proprietary rights of a third party; (iii) Akvo is under any pre-existing obligations inconsistent with its obligations under the Agreement; (iv) Akvo will comply, with all applicable laws, status, rules, regulations and ordinances with respect to the Services and Akvo’s performance under the Agreement, including, laws related to data privacy, trans-border data flow and data protection, and shall obtain all necessary approvals and permits to perform its obligations under the

Agreement. For more information on how Akvo handles data privacy please read [Akvo's General Privacy Policy](#).

- 10.2. The forgoing warranties are in lie of all other warranties, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, which are expressly disclaimed.

11. Assignment and successors

- 11.1. Neither Party may transfer or assign the Agreement or any benefit, obligation, duty, right or claim arising out of or related to the Agreement without the prior written consent of the other Party.
- 11.2. The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their authorised heirs, administrators and successors and assigns.

12. No third party beneficiaries

- 12.1. With the exception of the Indemnified Persons, the covenants, conditions and terms of the Akvo General Terms of Service shall be, to the extent of permitted by law, for the sole and exclusive benefit of the Parties hereto and their respective permitted successors and assigns.

13. Notices

- 13.1. Any notice required under the Agreement shall be given in writing by (i) personal delivery, (ii) a nationally-recognised, next-day courier service, (iii) first-class registered or certified mail, postage prepaid,

(iv) or electronic mail to the Party's address specified in the Agreement, or to the address that a Party has notified to be that Party's address for purposes of this section.

- 13.2. Any notice given under the Agreement will be effective on (i) the other Party's receipt of it, or (ii) if mailed, the earlier of the other Party's receipt of it and the fifth business day after mailing it through the national post office, or two days following the deposit of the same with a nationally recognised express delivery service
- 13.3. Each Party shall modify their address as necessary by giving written notice of the modification to the other Party in accordance with this Section.

14. Ruling law, mediation and arbitration

- 14.1. The Agreement shall be governed by and construed in accordance with the substantive and procedural laws of The Netherlands, excluding its choice of law provisions and conflicts of laws principles. The parties specifically exclude from application to the Agreement that law known as the United Nations Convention on the International Sale of Goods, except that this arbitration clause and any arbitration hereunder shall be governed by the Netherlands Arbitration Institute (NAI) under the NAI Mediation Rules.
- 14.2. The Akvo General Terms of Service with respect to the subject matter hereof, supersedes the terms of any discussions or any other communications, except for services terms and conditions covering SaaS as stated in section 1.3 or a separate confidentiality article in the Agreement covering confidentiality as stated in section 14. If any provision of the Akvo General Terms of Service is held invalid, that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of the Akvo General Terms of Service shall continue in full

force and effect. No term or provision hereof will be considered waived by either Party, and no breach excused, unless such waiver or consent is in writing signed by such Party. No consent by a Party to, or waiver of, a breach, whether express or implied, will constitute consent to, waiver of, or excuse of any other, different or subsequent breach.

- 14.3. The parties shall seek amicably to settle any controversy or claim arising out of or relating to the Agreement, or the breach thereof. In the event of any controversy or claim arising out of or relating to the Agreement, or a breach thereof, remains unresolved thirty (30) days after either party gives written notice of the existence of such dispute, the parties hereto agree first to try and settle the dispute by mediation, administered by the Netherlands Arbitration Institute (NAI) under the NAI Mediation Rules. If settlement is not reached within sixty (60) days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to the Agreement shall be settled by arbitration in accordance with the NAI Arbitration Rules of the Netherlands Arbitration Institute. The seat of the arbitration shall be Amsterdam, The Netherlands.
- 14.4. One (1) arbitrator shall settle the arbitration. The arbitrator shall be appointed by the Netherlands Arbitration Institute within twenty-one (21) days of receipt of the request for arbitration. The arbitrator is authorized to award to the prevailing party, if any, as determined by the arbitrator its costs and expenses, including attorneys' fees. The arbitrator may not award punitive, exemplary, or consequential damages, nor may the arbitrator apply any multiplier to any award of actual damages, except as may be required by statute. The arbitrator shall have the discretion to hear and determine at any stage of the arbitration any issue asserted by any party to be dispositive of any claim or counterclaim, in whole or part, in accordance with such procedure as the arbitrator may deem appropriate, and the arbitrator may render an award on such issue.

15. Confidentiality

Neither Party shall offer confidential information to the other Party without clearly marking the information “Confidential” and “Not a Contribution”. If either Party requires confidentiality then a separate article on confidentiality will have to be added to the Agreement.

16. About these Terms

- 16.1. We may modify these terms that apply to an Akvo Service to, for example, reflect changes to the law or changes to our Services. You should look at the terms regularly. We'll post notice of modifications to these terms on this page.
- 16.2. Changes will not apply retrospectively and will become effective no earlier than fourteen days after they are posted. However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for a Service, you should discontinue your use of that Service.
- 16.3. These terms govern the relationship between Akvo and the Partner (or organisation). They do not create any third party beneficiary rights.

- 16.4. If you do not comply with these terms and we do not take action immediately, this does not mean that we are giving up any rights that we have (such as taking action in the future).
- 16.5. If it turns out that a particular term is not enforceable, this will not affect any other terms.
- 16.6. The Akvo Foundation and you are not legal partners or agents; instead, our relationship is that of independent contractors.

17. Breach of terms and questions

If you are aware of any breach of these Terms or have any questions with regards to the Terms, please contact us at:

Akvo Foundation
's-Gravenhekje 1A,
1011 TG Amsterdam,
The Netherlands.
legal@akvo.org