

SaaS Terms of Service

The Akvo Foundation

(Stichting Akvo with it's incorporated organisational entities)

Published September 2018

akvoflow

Document Control

Version History

Version	Status	Reason for change	Changes done by
1	Draft, June 2018		Lynn Brannstrom
1.1	Draft, July 2018	Added billing changes	Lynn Brannstrom
1.2	Draft, August 2018	Added Addition terms for products	Lynn Brannstrom
1.3	Final, September 2018	Various updates incl. Billing & termination	Lynn Brannstrom
1.4	August 2022	Various updates re to renewals	Hans Merton

Posted: 5 October 2018

Effective: 5 October 2018

Thank you for using our products, websites and cloud services (“SaaS Services”). The SaaS Services are provided by the Akvo Foundation. “Akvo” means Stichting Akvo (Akvo Foundation with its incorporated organisational entities) located at ‘s-Gravenheekje 1A, 1011 TG Amsterdam, The Netherlands.

By using our SaaS Services, you are agreeing to these terms. Please read them carefully.

Our SaaS Services are diverse, so sometimes additional terms (“Additional Terms”) or product requirements may apply. Additional Terms are available for each of the relevant SaaS Services and those Additional Terms become part of your agreement with us if you use those SaaS Services.

For the purpose of the Akvo SaaS Terms of Service the “Agreement” shall include any individual Agreement concluded between Parties defining the scope of software-as-a-service (referred to as “SaaS” or “SaaS Services”). 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.

If you are using the SaaS Services on behalf of an organisation, you are agreeing to these Terms for that organisation and promising that you have the authority to bind that organisation to these Terms, **including the binding arbitration provision contained in Section 17**. In that case, “you” and “your” will refer to that organisation (also referred to as the “Creator” or “Partner”).

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

You may use the SaaS Services only if you have the power to form a contract with the Akvo Foundation and are not barred under any applicable laws from doing this.

1. Using our Services

- 1.1. You must follow any policies made available to you within the SaaS Services.
- 1.2. Do not misuse our SaaS Services, for example, do not interfere with our SaaS Services or try to access them using a method other than the interface and the instructions that we provide. You may use our SaaS Services only as permitted by law. We may suspend or stop providing our SaaS Services to you if you do not comply with our terms or policies or if we are investigating suspected misconduct.
- 1.3. Using our SaaS Services does not give you ownership of any intellectual property rights in our SaaS Services or the content that you access. You may not use content from our SaaS Services unless the content has been published publicly by its Creator, you obtain permission from its Creator or are otherwise permitted by law. Do not remove, obscure or alter any legal notices displayed in or along with our SaaS Services.
- 1.4. You are responsible for your conduct, your content and your communications with others while using our SaaS Services. We may review content to determine whether it is illegal or violates our policies, and we may remove or refuse to display content that we reasonably believe violates our policies or the law.
- 1.5. In connection with your use of the SaaS Services, we may send you service announcements, administrative messages and other information. You may opt out of some of those communications. Read the Akvo Foundation's [Privacy Policy](#) to find out more information on how your data is handled by us.

2. Your Akvo SaaS Services user Account

- 2.1. You may need a user account ("Account") in order to use some of our SaaS Services. You may create your own Account, or your Account may be assigned to you by an administrator, such as your employer or organisation. If you are using an Account assigned to you by an administrator, different terms may apply, and your administrator may be able to access or disable your Account.
- 2.2. To protect your Account, keep your password confidential. You are responsible for the activity that happens on or through your Account. Do not reuse your Account password on third-party applications. If you learn of any unauthorised use of your password or Account please contact breach@akvo.org immediately.

3. Privacy and Copyright Protection

- 3.1. Akvo Foundation's [Privacy Policies](#) explain how we treat your personal data and protect your privacy when you use our products or services. By using our SaaS Services, you agree that the Akvo Foundation can use such data in accordance with our Privacy Policies.
- 3.2. The software and technology we use to provide our SaaS Services are protected by copyright, trademark, and other laws of both the Netherlands and other countries. These Terms do not grant you any rights to use the Akvo Foundations trademarks, logos, domain names, or other brand features. For more information on licensing and copyright go to our '[Licensing and copyright](#)' policy page.

4. Billing and payments

- 4.1. Akvo's budget for performing the SaaS Services is described in the Agreement. Each Agreement will contain a budget section with separate software-as-a-service product fees as "Software tools" (referred to here as "SaaS Fees").
- 4.2. You shall pay each undisputed invoice within thirty (30) days of the date of the invoice. You 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 you do 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 to supply the SaaS Services or suspend performance until payment is made.
- 4.3. 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). Payments by the Partner will thereafter be applied first to accrued interest and then to the unpaid principal balance.
- 4.4. You may request an extension or an upgrade to your plan at any time. This would be agreed upon in an addendum to the existing Agreement. You may request to downgrade your plan at the end of each contractul year, with at least 60 (sixty) days notice period.

5. Auto-renewal of SaaS Services

- 5.1. Akvo SaaS Service agreements will be renewed automatically, each year for an additional one (1) year period, for a period of no more than three (3) years. Thereafter, a new agreement will be negotiated.
- 5.2. Termination of automated renewals of SaaS Services are accepted with a sixty (60) day notice period.
- 5.3. As protection against price resets, due to improved functionality of the SaaS Service over time, Akvo will adjust the SaaS Fee by no more than 5% over each renewal period, for a maximum of three (3) years. Thereafter, a new agreement will be negotiated.

6. Modifying and Terminating our SaaS Services

- 6.1. We are constantly changing and improving our SaaS Services. We may add or remove functionalities or features and we may suspend or stop a SaaS Service altogether.
- 6.2. Termination of SaaS Services are accepted with a sixty (60) day notice period before the contract end date. Pre-paid service fees are not refundable. The Akvo Foundation may also stop providing SaaS Services to you or add or create a new limit to the SaaS Services at any time.
- 6.3. We believe that you own your data, and preserving your access to such data is important. If we discontinue a SaaS Service, where reasonably possible, we will give you reasonable advance notice and a chance to remove information from that SaaS Service.
- 6.4. Upon termination your data will be held by Akvo for a period described in our [Retention Policy](#) unless negotiated separately in the Agreement with the Akvo Foundation.

7. Your content in our SaaS Services

- 7.1. Some of our SaaS Services allow you to upload, submit, store, send and receive content. It is your responsibility to ensure that no content is published or collected which could cause serious harm to individuals or property, using our SaaS Services. You retain ownership of any intellectual property rights that you hold in that content. In short, what belongs to you stays yours. If you have any questions about this, please contact your Akvo Foundation account manager.

- 7.2. When you upload, submit, store, send or receive content to or through our SaaS Services, you give Akvo (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes that we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights that you grant in this licence are for the limited purpose of operating and improving our SaaS Services, and to develop new ones.
- 7.3. Some of our SaaS Services may display your Profile name when you choose to publicly publish your content.
- 7.4. You can find more information about how the Akvo Foundation uses and stores content in the [Privacy Policies](#) or Additional Terms for particular SaaS Services. If you submit feedback or suggestions about our SaaS Services, we may use your feedback or suggestions without obligation to you.

8. Sharing your content

- 8.1. In cases where an organisation collects data that is not sensitive or private, we encourage them to open up their data where appropriate, so it can support ‘the common good’.
- 8.2. You do agree to share openly published or non-private content which you enter into the Akvo Foundations software through the Akvo Foundation’s Application Programming Interfaces (APIs) and the services with any other Akvo Foundation platform (such as maps, etc.) using open license agreements.
- 8.3. 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/>
- 8.4. For data you agree to share it on the terms of the following two license agreements:
 - 8.4.1. 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/>

8.4.2. 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/>

8.5. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how The Akvo Foundation handles personal data in the [Akvo Privacy Policy](#).

9. Other content

9.1. The SaaS Services may contain links to third-party websites or resources. The Akvo Foundation does not endorse and is not responsible or liable for their availability or accuracy or any related content, products or services. You are solely responsible for any use of such websites or resources.

10. About Software in our SaaS Services

- 10.1. When a SaaS Service requires or includes downloadable client software package or application, this software may be updated automatically on your device once a new version or feature is available, or you may be requested to allow the update.
- 10.2. You are responsible for updating all mobile devices, API integrations and widgets, when required.
- 10.3. The Akvo Foundation gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive right to use the software provided to you by the Akvo Foundation as part of the SaaS Services. This licence is for the sole purpose of enabling you to use and enjoy the benefit of the SaaS Services as provided by the Akvo Foundation in the manner permitted by these terms.
- 10.4. The software is covered by an open source license, GNU Affero General Public License v3.0 [AGPL 3.0] (or later versions as applicable), which can be found in its entirety here: <https://www.gnu.org/licenses/agpl-3.0.html>

11. Cloud storage providers

11.1. The Akvo Foundation uses cloud services, provided by various third party processors, for software execution, data storage, data retention and processing. Our third party processors (“Sub-processors”) are amongst the most used and best known service providers globally, are ISO certified and comply with US and EU regulations. Cloud storage allows our partners to use

our SaaS Services across the globe, with ease. Visit the link for a list of our current [Sub-processors](#).

- 11.2. The exact rules and regulations around storing data in the cloud are, in many countries, still under development. Some countries demand that data which is related to national security be stored inside the country. The Akvo Foundation has a policy in place not to work with partners on initiatives that aim to collect data that relates to matters of national security. It is your responsibility to ensure that data is collected in compliance with national laws in countries where you use the service.

12. Our Warranties and Disclaimers

- 12.1. Other than as expressly set out in these terms or Additional Terms, neither the Akvo Foundation nor its suppliers makes any specific promises about the SaaS Services. For example, we do not make any commitments about the content within the SaaS Services, the specific functions of the SaaS Services or their reliability, availability or ability to meet your needs. We provide the SaaS Services “as is”.
- 12.2. Some jurisdictions provide for certain warranties, like the implied warranty of fitness for a particular purpose and non-infringement. To the extent permitted by law, we exclude all warranties.

13. Liability for our SaaS Services

- 13.1. When permitted by law, the Akvo Foundation and our suppliers, will not be responsible for lost profits, revenues or data, financial losses or indirect, special, consequential, exemplary or punitive damages.
- 13.2. To the extent permitted by law, the total liability of the Akvo Foundation and its suppliers for any claims under these terms, including for any implied warranties, is limited to the amount that you paid us to use the SaaS Service or Services in question (or, if we choose, to supplying you with the SaaS Services again).
- 13.3. In all cases, Akvo and its suppliers will not be liable for any loss or damage that is not reasonably foreseeable.
- 13.4. In order to use our SaaS Services a contract is required. Our SaaS Services are not intended for personal use.

14. Business use of our SaaS Services

- 14.1. If you are using our SaaS Services on behalf of an organisation, that organisation accepts these terms. It will hold harmless and indemnify the Akvo Foundation and its suppliers, officers, agents and employees from any claim, action or proceedings arising from or related to the use of the SaaS Services or violation of these terms, including any liability or expense arising from claims, losses, damages, judgements, litigation costs and legal fees as per Section 15 of these terms.
- 14.2. You may not assign SaaS Services to a third party, without prior written approval of the Akvo Foundation.
- 14.3. For organisations within the European Union, or collecting data on data subjects who are European citizens, we have a [Data Processing Agreement available on our website](#).

15. Indemnification

- 15.1. 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 within the current binding laws 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.
- 15.2. 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.

- 15.3. For indemnification when dealing with Personal Data protection under the EU GDPR, please read Section 12 of [The Akvo Foundation Data Processing Agreement](#).

16. Additional Terms

16.1. Akvo Really Simple Reporting (Akvo RSR)

Your content

- 16.1.1. By using Akvo RSR you provide us with project information, data and images that you submit to and decide to publish through Akvo RSR (together, “your content”). You retain full ownership of your content. We don’t claim any ownership to any of it. You do agree to share your content which you enter into the Akvo RSR system through the Akvo RSR system, for projects which you publish publicly, through the Akvo RSR Application Programming Interface (API) and the Services using open license agreements.
- 16.1.2. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how Akvo RSR handles personal data in the Akvo RSR Privacy policy.

16.2. Akvo Flow

Your content

- 16.2.1. By using Akvo Flow, which incorporates Akvo Caddisfly, you provide us with data and images that you submit through Akvo Flow together, “your content”). You retain full ownership of your content. We don’t claim any ownership to any of it. You do agree to share your content which you enter into the Akvo Flow system through the Akvo Flow system, for data which you publish publicly, through the Akvo Flow Application Programming Interface (API) and the Services using open license agreements.
- 16.2.2. Where a Partner collects data that is not sensitive or private, we encourage them to open up their data where appropriate, so it can support ‘the common good’. There is a specific setting in Akvo Flow that enables you to do this automatically.
- 16.2.3. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how Akvo Flow handles personal data in the [Akvo Flow Privacy policy](#).
- 16.2.4. Akvo Caddisfly shall only be used to carry out available tests on the type of water and soil samples the Akvo Caddisfly tests were specifically designed for. [The available tests are listed here](#).

- 16.2.5. Tests undertaken by using Akvo Caddisfly are field screening tests and **not** a substitute for properly executed laboratory tests. Accordingly, you shall not take any decision on the potability or otherwise of drinking water solely on the basis of using Akvo Caddisfly and Flow. Specific reference is made to Section 7. Limitations of liability in Akvo's General Terms of Service.
- 16.2.6. All testing with Akvo Caddisfly shall be in strict accordance with the instruction manual present in the Akvo Caddisfly app and relevant product manuals delivered by relevant hardware and chemical suppliers, including the storage and handling of all ingredients as well as complying with the instructions pertaining to errors, test range, etc. You agree to use any reagents before their expiry dates mentioned on their packaging and acknowledge that in the event the expired reagents are used, the test results would vary.
- 16.2.7. On all test hardware used with Akvo Caddisfly, the supplier's warranties and services are applicable. These will be provided in combination with the hardware and/or can be found at the hardware supplier's website.
- 16.2.8. All test equipment shipped under the responsibility of the Akvo Foundation to you, for use with Akvo Caddisfly, is insured against damage and theft up to the time of formal handover of ownership to you or another agreed organisation. This is defined within the Agreement.

16.3. Akvo Lumen

Your content

- 16.3.1. By using Akvo Lumen you provide us with data and images that you submit through Akvo Lumen together, "your content"). You retain full ownership of your content. We don't claim any ownership to any of it. You do agree to share your content which you enter into the Akvo Lumen system through the Akvo Lumen system, for data which you publish publicly, through the Akvo Lumen Services using open license agreements.
- 16.3.2. Where a Partner collects data that is not sensitive or private, we encourage them to open up their data where appropriate, so it can support 'the common good'. There is a specific setting in Akvo Lumen that enables you to publicly share your dashboards and visualisations.
- 16.3.3. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how Akvo Lumen handles personal data in the [Akvo Lumen Privacy Policy](#).

16.4. Akvo Sites

Your content

- 16.4.1. By using Akvo Sites you provide us with data and images that you submit through Akvo Sites together, “your content”). You retain full ownership of your content. We don’t claim any ownership to any of it. You do agree to share your content which you enter into the Akvo Sites system through the Akvo Sites system, for data which you publish publicly, through the Akvo Sites Services using open license agreements.
- 16.4.2. Where an organisation creates content that is not sensitive or private, we encourage them to open up their content where appropriate, so it can support ‘the common good’.
- 16.4.3. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how Akvo Flow handles personal data in the Akvo Sites Privacy Policy.

16.5. Akvopedia

- 16.5.1. Akvopedia’s Additional Terms can be found at:
https://akvopedia.org/wiki/Akvopedia:Policies_and_guidelines
- 16.5.2. Akvopedia’s Privacy policy can be found at:
https://akvopedia.org/wiki/Akvopedia:Privacy_policy
- 16.5.3. Akvopedia’s General disclaimer
https://akvopedia.org/wiki/Akvopedia:General_disclaimer

16.6. Akvo website <https://akvo.org>

- 16.6.1. By using Akvo.org you provide us with data and images that you submit through comments or forms together, “your content”). You do agree to share your content which you enter into Akvo.org through the Akvo.org website, for data which you publish publicly, through the Akvo.org website.
- 16.6.2. It is your responsibility to ensure that you have consent to share any personal data. You can read more about how the Akvo Foundation handles personal data in the [Akvo Foundation General Privacy Policy](#).

17. Ruling law, mediation and arbitration

- 17.1. 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.
- 17.2. The Akvo SaaS 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 covered in the Akvo General Terms of Service or a separate confidentiality article in the Agreement covering confidentiality as stated in section 14. If any provision of the Akvo SaaS 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 SaaS 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.
- 17.3. 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.
- 17.4. 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.

18. About these Terms

- 18.1. We may modify these terms or any Additional Terms that apply to a SaaS Service to, for example, reflect changes to the law or changes to our SaaS Services. You should look at the terms regularly. We'll post notice of modifications to these terms, including the Additional Terms, on this [page](#).
- 18.2. 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 SaaS Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for a SaaS Service, you should discontinue your use of that SaaS Service and let Akvo know in writing as to why use of the SaaS Service will end due to the modified terms.
- 18.3. If there is any inconsistency between these terms and the Additional Terms, the Additional Terms will prevail to the extent of the inconsistency.
- 18.4. These terms govern the relationship between the Akvo Foundation and you (or your organisation). They do not create any third party beneficiary rights.
- 18.5. 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).
- 18.6. If it turns out that a particular term is not enforceable, this will not affect any other terms.
- 18.7. The courts in some countries will not apply Dutch law to some types of disputes. If you reside in one of these countries, then where Dutch law is excluded from applying, your country's laws will apply to such disputes related to these terms.
- 18.8. The Akvo Foundation and you are not legal partners or agents; instead, our relationship is that of independent contractors.

19. 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