Agreement on Hosted Repository Service

Contents

This agreement on **Hosted Repository Service** (the "**Agreement**") is entered into between:

Parties

1. Global Biodiversity Information Facility Secretariat, incorporated and registered in Denmark with company registration number 29 08 71 56, the registered office of which is at Universitetsparken 15, 2100 København Ø ("**GBIF**")

2. The owner of the repository for which the Service will be provided ("**Repository Owner**"),

(individually referred to as a "**Party**" and together as the "**Parties**".)

1. Introduction and background

1. GBIF is an international network and data infrastructure funded by the world's governments and aimed at providing anyone, anywhere, open access to data about all types of life on Earth. More information can be found here: https://www.gbif.org/what-is-gbif

2. In addition to the data mentioned in Clause 1.1, GBIF also deploys data repository software for customers wanting to upload, store and share data through GBIF. GBIF will through this Agreement provide this repository hosting service to the Repository Owner.

2. Definitions

1. **GBIF Secretariat**: Legal entity empowered by the GBIF participants to enter into contracts, execute the work programme, and maintain the central services for the GBIF network including software components and updates, interfaces, indexing and registry services, help desk and relevant training.

2. **GBIF Network**: The infrastructure consisting of the central services of the GBIF Secretariat, participant nodes and data publishers. Making data available through the GBIF Network means registering and advertising the pertinent services via the GBIF central services.

3. **GBIF Participant**. A country, economy or organization that joins GBIF by signing a Memorandum of Understanding.

4. **Biodiversity Data**: Primary data on specimens, observations, names, taxonomic concepts, and sites, and other data on biological diversity.

5. **Data Publishing**: The process of and agreements for making data freely and universally available on the Internet.

6. **Data Publisher**: A custodian that makes data publicly available, whether they are or are not the data owner. In cases where data publishers are not the data owners, they will have declared that they have permission to make the data available under terms of the GBIF Data Publisher Agreement.

7. **User**: Anyone who uses the Internet to access data through the GBIF network.

8. **Repository Owner**: The party responsible for all content deposited in the repository being hosted by the GBIF Secretariat.

9. **Service**: The functions provided through licensed software have the meaning set out in Section 3.

3. The Service

1. GBIF shall provide the services as follows ("**Service**"):

   o A hosted installation of the GBIF Repository Software (currently the GBIF Integrated Publishing Toolkit);

   o Ability to administer the users that will manage and publish data in the repository;

   o Regular backup of the published data;

   o Regular updates of the repository software;

   o Technical support during GBIF Secretariat office hours.

2. In addition to the Agreement, the Repository Owner has agreed to abide by the terms stated in Clauses 3.2.1-3.2.3.

   o GBIF's Data user agreement: https://www.gbif.org/terms/data-user

   o GBIF's Data publisher agreement: https://www.gbif.org/terms/data-publisher

   o GBIF's Privacy policy: https://www.gbif.org/terms/privacy-policy

3. If there is any conflict between this Agreement and the terms in Clauses 3.2.1-3.2.3, the conflict shall be resolved in accordance with the following order of precedence:

   o Terms in this Agreement

   o Terms in Clauses 3.2.1-3.2.3

4. Maintenance and service levels

1. GBIF agrees to take charge of maintaining all parts of the Service and will update and maintain these regularly. GBIF will strive to notify Repository Owner of any updates or planned downtime for the Service, and the Repository Owner can always contact GBIF at helpdesk@gbif.org with questions regarding the operation of the Service.

2. GBIF may create an administrative account on the Repository to facilitate access for staff responsible for supporting this service.

3. The parties have agreed that there should be no minimum service levels or indicators for the Service.

5. Repository Owner's rights

Repository Owner can use the Service to host and publish data to the GBIF network.

6. Fees

1. The Service is provided free of charge.
2. Each party shall bear the costs which arise in the field of its own activity.

7. Intellectual property rights

1. The Service is provided under an open-source licence released under an [Apache 2.0 licence](#).

2. The data available through the Service carries a Creative Commons licence as documented by the GBIF Publisher Agreement, cf. Clause 3.2.2.

8. Data protection, data processing and e-privacy

1. To ensure compliance with Article 28(3) of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), The Repository Owner further agrees to that GBIF will act as the "Data Processor" and process personal data on behalf of the Repository Owner.

2. GBIF shall process personal data including names, usernames and passwords for users of the Repository Software in accordance with §2.1 of its [Privacy Policy](#).

3. If the Data Controller has no establishment in the European Union for the purposes of the processing activity and does not fall under the territorial scope of the GDPR as per Article 3(2), GBIF's obligation herein shall be interpreted and limited to take into account that the Data Controller is not subject to obligations under GDPR.

9. Rights and remedies under Danish law

1. The rights and remedies (in Danish: "misligholdelsesbeføjelser") available under Danish Law shall apply to this Agreement and be available to each Party, except to the extent expressly derogated from in this Agreement.

10. Warranties, liability and indemnification

1. **Warranties**
   Repository Owner acknowledges that, except as otherwise expressly provided herein, GBIF, its affiliates and licensors make no warranty, express, implied or statutory with respect to the Service or use thereof. GBIF, its affiliates and licensors hereby expressly disclaims all other warranties, including, without limitation, any warranty that Service will be uninterrupted, error free or without delay, and the implied warranties of merchantability, fitness for a particular purpose, non-interference, non-infringement and information content.

2. **Liability**
   Except as otherwise expressly provided herein, neither Party nor its affiliates are liable for any special, indirect, incidental, punitive or consequential damages relating to or arising out of this Agreement or the services, including, without limitation, lost profits, lost computer usage time, and damage to, or loss of use of data, even if

advised of the possibility of such damages, and irrespective of any negligence of a Party or whether such damages result from a claim arising under tort or contract law.

Notwithstanding this Clause 10.2, Repository Owner acknowledges that the Service is provided as-is, meaning that if the Repository Owner in any way alters or changes the Service, the Repository Owner will be solely responsible (and, if relevant, indemnify GBIF) for any special, indirect, incidental, punitive or consequential damages relating to or arising hereof.

3. **Indemnification**
The Repository Owner will indemnify, defend and hold GBIF, its subsidiary companies or employees harmless from and against any losses arising out of or related to any claim or action that may arise from a third party against GBIF related to the Repository Owner's use of the Service under this Agreement, including but not limited to use of content in violation with the documents specified in Clause 3.2. GBIF will provide the Repository Owner with prompt written notice of any claim or action relating to this indemnity and the Repository Owner will have the sole right to conduct the defence of any such claim or action and all negotiations for its settlement and/or compromise.

11. Confidentiality

1. Neither Party may disclose confidential information (meaning proprietary or information that is disclosed by one Party to the other) to any third party or use this information in violation of this Agreement, except if agreed by the other Party.

2. Each Party may use the other Party's name in externally published medias, if this is agreed between the Parties.

12. Renegotiation of terms

1. The Parties agree to renegotiate the terms in this Agreement (e.g. service levels, warranties, liability, termination), if the Service is no longer provided free of charge, cf. Clause 6.

13. Governing law and dispute resolution

1. Any dispute arising out of or in connection with this Agreement shall be governed by Danish law and subject to simplified arbitration administrated by The Danish Institute of Arbitration in accordance with the rules of the simplified arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

14. Term and termination

1. This Agreement begins the day the Repository Owner has been provided the Service and will remain in effect unless terminated by either Party.

2. Repository Owner may terminate this Agreement immediately. In such case, GBIF agrees to within five (5) business days after receiving a written request from the Repository Owner to terminate the Service, e.g. by removing the repository.

3. GBIF may terminate this Agreement with twelve (12) months prior notice or if the Repository Owner's status as a GBIF Participant changes.