

AGREEMENT ON HOSTED PORTAL SERVICE

Contents

1. INTRODUCTION AND BACKGROUND.....	3
2. DEFINITIONS.....	3
3. THE SERVICES.....	4
4. MAINTENANCE AND SERVICE LEVELS.....	4
5. SITE OWNER'S RIGHTS.....	5
6. FEES.....	5
7. INTELLECTUAL PROPERTY RIGHTS.....	5
8. DATA PROTECTION AND E-PRIVACY.....	5
9. RIGHTS AND REMEDIES UNDER DANISH LAW.....	6
10. WARRANTIES, LIABILITY AND INDEMNIFICATION.....	6
11. CONFIDENTIALITY.....	6
12. RENEGOTATION OF TERMS.....	7
13. GOVERNING LAW AND DISPUTE RESOLUTION.....	7
14. TERM AND TERMINATION.....	7

This agreement on **HOSTED PORTAL 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 site where the Services will be provided ("**Site Owner**")

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

1. INTRODUCTION AND BACKGROUND

- 1.1 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>
- 1.2 In addition to the data mentioned in Clause 1.1, GBIF also deploys web services and websites for customers wanting to expose a filtered subset of the total information available on GBIF. The growing suite of data capabilities includes information about data publishers, datasets, species and species occurrence data mediated through GBIF which are covered by the GBIF API (<https://www.gbif.org/developer>). GBIF will through this Agreement provide these services to the Site Owner, automatically including any additions made to the GBIF API in the future.

2. DEFINITIONS

- 2.1 **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, helpdesk and relevant training.
- 2.2 **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.
- 2.3 **Biodiversity Data:** Primary data on specimens, observations, names, taxonomic concepts, and sites, and other data on biological diversity.
- 2.4 **Data Publishing:** The process of and agreements for making Data freely and universally available on the Internet.
- 2.5 **Data Publisher:** A custodian of data making it technically available. This may or may not be the data owner. If not they will have declared to GBIF that they have permission to make the data available.

- 2.6 **User:** Anyone who uses the Internet to access data through the GBIF network.
- 2.7 **Site Owner:** The party responsible for all content displayed on the website being hosted by the GBIF Secretariat that is not delivered by the GBIF API.
- 2.8 **Owner of data:** The legal entity possessing the right resulting from the act of creating a digital record. The record may be a product derived from another, possibly non-digital product, which may affect the right.
- 2.9 **Services:** has the meaning set out in Section 3.

3. THE SERVICES

- 3.1 GBIF shall provide the services as follows (“Services”):
- Simple content management capabilities to author pages, news items etc arranged in a website with customisable menu, styling and logo;
 - Ability to configure and embed data exploration tools into the website using data served through the GBIF API;
 - Hosting of the assembled website on a GBIF server or a cloud server that GBIF administers.
- 3.2 In addition to the Agreement, the Site Owner has agreed to the terms stated in Clauses 3.2.1-3.2.4. These terms might apply in addition to this Agreement, but if there is an interpretation conflict, this Agreement prevails.
- 3.2.1 GBIF’s Data user agreement: <https://www.gbif.org/terms/data-user>
- 3.2.2 GBIF’s Data publisher agreement: <https://www.gbif.org/terms/data-publisher>
- 3.2.3 GBIF’s Privacy policy: <https://www.gbif.org/terms/privacy-policy>
- 3.2.4 GBIF’s Hosted Portal Data Processing Agreement:
<https://www.gbif.org/terms/hosted-portal/data-processor>
- 3.3 If there is any conflict between this Agreement and the terms in Clauses 3.2.1-3.2.4, the conflict shall be resolved in accordance with the following order of precedence:
- 3.3.1 Terms in Clause 3.2.4
 - 3.3.2 Terms in this Agreement
 - 3.3.3 Terms in Clauses 3.2.1-3.2.3

4. MAINTENANCE AND SERVICE LEVELS

- 4.1 GBIF undertakes to be in charge of the maintenance of all parts of the Services and will update and maintain these regularly. GBIF will strive to notify Site Owner of any updates or planned downtime for the Services, and the Site Owner can always contact GBIF at helpdesk@gbif.org regarding any questions relating to the operation of the Services.
- 4.2 The parties have agreed that there should be no service levels for the Services.

5. SITE OWNER'S RIGHTS

Site Owner can use the Services to e.g. provide text/news items etc to communicate Site Owner's work. This may include open/closed mailing lists to provide help for researchers, to announce webinars, conferences etc, or to offer assistance in sharing and correcting data shared through the GBIF network.

6. FEES

The Services are provided free of charge.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Services are provided under an open-source license released under Apache 2.0 license and can be taken, changed and adapted under the terms of the Apache 2.0 license.
- 7.2 The data available through the Services carry a Creative Commons license as documented by the GBIF Publisher Agreement, cf. Clause 3.2.2.
- 7.3 Site Owner is and shall be the sole and exclusive owner of all rights, title and interest (including intellectual property rights) to data not delivered by the GBIF API, cf. Clause 7.2

8. DATA PROTECTION AND E-PRIVACY

- 8.1 In connection with provision of the Services, GBIF will come into possession of personal data for which Site Owner is the data controller. The parties agree that the Site Owner is the Data Controller and GBIF is the Data Processor for such personal data. As part of this Agreement the parties have entered the Data Processing Agreement (cf. clause 3.2.4).
- 8.2 The Site Owner is responsible for ensuring that the processing of personal data takes place in compliance with the GDPR, and any other applicable data protection provisions. The Site Owner shall be responsible, among other, for ensuring that the processing of personal data, which the data processor is instructed to perform, has a legal basis.
- 8.3 The Site Owner alone is responsible for compliance with directive 2002/58/EC (Regulation on Privacy and Electronic Communications) as applicable, including in relation to informing and obtaining consent to the use of cookies and similar technology, and where required to obtain consent for e-marketing communication.
- 8.4 ***Acceptance of cookies and privacy policies***
 - 8.4.1 GBIF has provided the Site Owner with a default policy for cookies and privacy, which the Site Owner agrees to fill out and specify for the specific Services delivered under this Agreement. GBIF also provides a default cookie consent solution as part of the standard product installation, which may be customised by the Site Owner.
 - 8.4.2 The privacy policy can be found in the project template from which the hosted portal is derived (<https://github.com/gbif/jekyll-hp-base-theme/blob/master/includes/privacyTemplate.md>).
 - 8.4.3 The policies (cf. Clauses 8.4.2 - 8.4.3) and the cookie consent solution are only provided as templates and default solution for the Site Owner to customize and fill out and GBIF does in no way guarantee their compliance with current legislation.

9. RIGHTS AND REMEDIES UNDER DANISH LAW

- 9.1 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

10.1 Warranties

Site 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 Services or use thereof. GBIF, its affiliates and licensors hereby expressly disclaims all other warranties, including, without limitation, any warranty that Services 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.

10.2 Liability

Except as otherwise expressly provided herein, neither Party or 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, Site Owner acknowledges that the Services are provided as-is, meaning that if the Site Owner in any way alters or changes the Services, the Site Owner will be solely responsible (and, if relevant, indemnify GBIF) for any special, indirect, incidental, punitive or consequential damages relating to or arising hereof.

10.3 Indemnification

The Site 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 Site Owner's use of the Services 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 Site Owner with prompt written notice of any claim or action relating to this indemnity and the Site 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

- 11.1 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.

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

12. RENEGOTIATION OF TERMS

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

13. GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 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

- 14.1 This Agreement begins the day the Site Owner has been provided the Services and will remain in effect unless terminated by either Party.
- 14.2 Site Owner may terminate this Agreement immediately. In such case, GBIF agrees to within 5 business days after Site Owner's written notice to terminate the Services, e.g. by removing the website.
- 14.3 GBIF may terminate this Agreement with 12 months prior notice.