

# AKUA Terms of Service

**Last Revised: May 26, 2017**

Akua's products and services provide environmental monitoring and tracking solutions for intermodal cargo containers, enabling in-transit visibility for your goods and shipments across the globe. With Akua, your logistics organization has access to the real-time status, alerts, and analysis needed to optimize supply-chain efficiency, and reduce overall risk to cargo.

These Terms of Service (these "Terms") apply to your access to and use of the Service (as defined below) provided by Akua, Inc. ("Akua", "we", or "us"). By ordering, accessing or using the Service, you agree to be bound by these Terms. If you do not agree to these Terms, you are not allowed to access or use the Service. The "Effective Date" of these Terms is the date that you first order, access or use any part of the Service.

If you are ordering, accessing, or using the Service in your capacity as an employee, consultant or agent of a company or other entity, you represent that you are an employee, consultant or agent of that company or entity, and that you have the authority to bind that company or entity to these Terms. For the purpose of these Terms, you (and, if applicable, the company or entity that you represent) will be referred to as "Customer" or "you".

These Terms form a binding agreement between you and Akua. We reserve the right to change or modify these Terms, or any of our other policies or guidelines, at any time upon notice to you. We may provide that notice in a variety of ways, including, without limitation, sending you an email, posting a notice on our website, or posting the revised Terms on our website and revising the date at the top of these Terms. Any changes or modifications will be effective after we provide notice that these Terms have been modified. You acknowledge that your continued access to or use of the Service following such notice constitutes your acceptance of the modified Terms. With that in mind, please check this page periodically, and review the Terms for changes.

We reserve the right – at any time, and without notice or liability to you – to modify the Service, or any part of it, temporarily or permanently. We may modify the Service for a variety of reasons, including, without limitation, to provide new features, implement new protocols, maintain compatibility with emerging standards, or comply with regulatory requirements.

1. **Definitions.** Here are some definitions we use in these Terms:

The "Effective Date" is the date that you first order, access or use the Service, or any part of it.

"Documentation" means any manuals, guides, documentation and other supporting materials related to the Service that we make generally available to our customers. Documentation is considered part of the Service.

"Fees" mean the fees that you are required to pay us to access and use the Service during the Subscription Term, as such fees are reflected on each applicable Order Form.

The "Order Form" means the written or electronic form that you use to order the Service. Upon execution by the parties (or, in the case of electronic orders, confirmation and placement of the order), each Order Form will be subject to these Terms. In the event of a conflict between the provisions of these Terms and any language in an Order Form, the provisions of these Terms will apply.

The "Order Effective Date" is the effective date of each Order Form.

"Data" means the data collected by Seals and Sensors.

A "Seal" means an Akua-proprietary secure gateway device which, when used in conjunction with the Service, provides real-time, in-transit security status for your cargo.

A “Sensor” means an electronic sensor which, when used in conjunction with the Service, monitors and reports on environmental changes.

“Equipment” means, collectively, the Seals and Sensors.

“Professional Services” means training, consulting, or implementation services that we provide to you as part of the Service.

The “Service” means, collectively, Akua Track and the Akua Cloud Service.

The “Akua Cloud Service” means the Akua-proprietary service that gives you the ability to access and view Data via your existing platform, or a third-party platform that you specify.

“Akua Track” means the Akua-proprietary platform that gives you the ability to access and view Data via Akua’s proprietary dashboard, which allows you to create customized alerts, maps, graphs, tables, and reports.

“Subscription Term” means the time period set forth on the Order Form. If no time period is set forth on the Order Form, unless otherwise agreed by the parties in writing, the Subscription Term will be one (1) year from the Order Effective Date.

2. **Grant of Access.** Subject to your continued compliance with these Terms (including, among other things, paying the Fees you owe us), we hereby grant you a limited, non-exclusive, non-transferable right and license to access and use the Service for your own internal business purposes, during the Subscription Term for which you have paid the applicable Fees.

3. **Restrictions.** You acknowledge that, as between the parties, we own all right, title, and interest in and to the Service, including all intellectual property rights therein, and that your rights to access and use the Service are limited to those expressly set forth in these Terms. Except as expressly authorized by these Terms, you may not: (i) modify, disclose, alter, translate or create derivative works of the Service; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Service (or any components thereof); (iii) use the Service to store or transmit any viruses, software routines, or other code designed to permit anyone to access the Service in an unauthorized manner, disable, erase or otherwise harm software, hardware, or data, or to perform any other harmful actions; (iv) build a competitive product or service, or copy any features or functions of the Service (including, without limitation, the look-and-feel of the Service); (v) interfere with or disrupt the integrity or performance of the Service; (vi) disclose to any third party any performance information or analyses relating to the Service; (vii) remove, alter or obscure any proprietary notices in or on the Service, including copyright notices; (viii) use the Service for any illegal or unauthorized purpose, or in a manner which violates any laws in your jurisdiction; (ix) use the Service beyond the applicable Subscription Term; (x) disassemble, decompile, or otherwise reverse engineer (or attempt to reverse engineer) any part of the Service; or (xi) cause or permit any third party to do any of the foregoing.

4. **Equipment.** We will lease the Equipment to you in such quantities as are set forth in the Order Form. As between the parties, we retain all right, title and interest in and to the Equipment, including all intellectual property rights therein. To the extent that software or firmware is embedded in the Equipment, we grant you a limited, non-exclusive, non-transferable license to use such software or firmware, solely in conjunction with the Equipment and your use of the Service during the Subscription Term. You agree that the Equipment - including, without limitation, its design, structure, and any associated software and firmware - constitutes or contains trade secrets of Akua and its licensors. Accordingly, you will not, nor permit nor authorize any third party to: (i) disassemble, modify, decompile, or reverse engineer the Equipment, or any associated software or firmware, in whole or in part; or (ii) remove, amend, obscure, or modify any product markings or proprietary rights notices appearing on the Equipment.

5. **Data.** As between the parties, we own the Data. Subject to your continued compliance with these Terms (including, among other things, paying the Fees you owe us), we hereby grant you a limited, non-exclusive, non-transferable right and license to access and use the Data for your own internal business purposes in connection with your use of the Service. We reserve the right to use, reproduce, modify, adapt and publish Data for the purpose of providing the Service to you. Furthermore, we reserve the right to create aggregations, analyses, and summaries of the Data or portions thereof and to use, disclose, and distribute such

aggregations, analyses, and summaries privately, publicly, and to any third party in support of our business (both during the period that these Terms are in effect, and thereafter), throughout the world and in any form or media, provided that such aggregations, analyses, and summaries do not directly or indirectly identify you. We will use commercially reasonable, industry-standard procedures to maintain and protect the Data in connection with providing the Service to you. In the event of any loss or corruption of Data, we will use commercially reasonable efforts to restore the lost or corrupted Data from the latest backup we maintained. THE FOREGOING WILL CONSTITUTE OUR SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF DATA.

6. **Feedback.** You may elect to provide us with feedback about the Service, or you may provide us with other comments and suggestions for new products, features, or improvements (collectively, "Feedback"). You acknowledge that we will own all right, title, and interest in and to the Feedback, and you hereby irrevocably transfer and assign to us all of your right, title and interest in such Feedback, including all intellectual property rights therein.

7. **Government Users.** We do not develop any technical data or computer software pursuant to these Terms. The Service and its Documentation been developed solely with private funds, are considered "Commercial Computer Software" and "Commercial Computer Software Documentation" as described in FAR 12.212, FAR 27.405-3, and DFARS 227.7202-3, and access is provided to U.S. Government end users as restricted computer software and limited rights data. Any access, use, disclosure, modification, distribution, or reproduction of the Service or Documentation by the U.S. Government, its end users or contractors is subject to the restrictions set forth in this Agreement.

8. **Your Responsibilities.** You acknowledge that you are solely responsible for maintaining the confidentiality of the usernames and passwords that you use to access and use the Service, and for any activity that takes place using your usernames and passwords.

9. **Support.** We will provide you with email-based support for the Service during the Subscription Term – just write to our support desk at [support@akua.us](mailto:support@akua.us). While we work hard to respond to you and resolve your issues quickly, we do not warrant that we will respond within any particular timeframe, or that we will be able to resolve your issue. We encourage you to review our FAQ pages on our website, which can provide valuable information to help answer your questions.

10. **Professional Services.** We include standard implementation of the Service in the Fees you pay us. However, from time to time, you may request (or your implementation of the Service may require) professional services that, as determined at our reasonable discretion, are outside the scope of a standard implementation (collectively, "Professional Services"). If we agree to perform Professional Services for you, we will provide such Professional Services for an additional fee, to be determined by the parties and set forth in the applicable Order Form. We will control the manner and means by which any Professional Services are performed, and we reserve the right to determine which personnel we assign to perform Professional Services for you. Provided we remain responsible for all of their acts and omissions, you agree that we can use third parties to help us perform Professional Services. You acknowledge that we retain all right, title and interest in and to anything we use or develop in connection with performing Professional Services for you, including, among other things, software programs, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how. To the extent that we deliver anything to you during the course of performing Professional Services (collectively, "Deliverables"), we grant you a limited, non-exclusive, non-transferable right and license to access and use the Deliverables during the Subscription Term, solely in conjunction with your use of the Service. You may not copy, modify, or otherwise create derivative works of any Deliverables without our prior written consent in each case.

11. **Payment.** You agree to pay us all applicable Fees in full, without deduction or setoff of any kind, in U.S. Dollars, within thirty (30) days of the date of the invoice. Amounts payable under this Agreement are nonrefundable. If you do not pay us on time, in addition to any other rights we may have at law or in equity (including, without limitation, suspending your right to access and use the Service until any delinquent Fees are paid), we reserve the right to charge you interest on past due amounts at 1.5% per month or the highest interest rate allowed by law, whichever is less, and to additionally charge all expenses of recovery.

12. **Taxes.** You are solely responsible for all taxes, fees, duties and governmental assessments that are imposed or become due in connection with these Terms, any Order Form, or your access to or use of the Service, other than taxes based on our net income. In the event that we are required to collect any tax for

which you are responsible, we may add such taxes, as appropriate, to the invoice amount and you will pay those taxes directly to us.

**13. Limited Warranties; Disclaimer.**

13.1 *Limited Warranty - Service.* We warrant solely to you that, during the applicable Subscription Term, the Service will function substantially in accordance with its Documentation. We do not warrant that your use of the Service will be uninterrupted, or that the operation of the Service will be error-free. The foregoing warranty will not apply if you modify the Service, or if you access or use the Service in any way that is not expressly permitted by these Terms, the applicable Order Form, or the Documentation. Our only obligation, and your only remedy, for any breach of this limited warranty will be for us, at our option and expense, to either: (i) repair the Service so that it complies with the limited warranty; or (ii) provide you with a reasonable procedure to circumvent the nonconformity.

13.2 *Limited Warranty – Professional Services.* We warrant solely to you that any Professional Services we perform for you will be performed in a good and workmanlike manner, by appropriately qualified personnel. You need to let us know about a problem within thirty (30) days of the date the Professional Services were performed in order to make a claim under the foregoing warranty. Our only obligation, and your only remedy, for any breach of this limited warranty will be for us to re-perform the non-compliant Professional Services, at our expense.

13.3 *Disclaimer.* THE LIMITED WARRANTIES DESCRIBED ABOVE ARE THE ONLY WARRANTIES WE MAKE WITH RESPECT TO THE SERVICE AND PROFESSIONAL SERVICES. WE DO NOT MAKE ANY OTHER WARRANTIES, AND WE HEREBY SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, THAT YOU GET FROM US OR ANYWHERE ELSE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. YOU ACKNOWLEDGE THAT THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR ANY OTHER SYSTEM OR FACILITY IN WHICH THE USE OR FAILURE OF THE SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE (COLLECTIVELY, "HIGH-RISK ACTIVITIES"). ACCORDINGLY, WE SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR USE OF THE SERVICE IN CONJUNCTION WITH ANY HIGH RISK ACTIVITIES. YOU SPECIFICALLY ACKNOWLEDGE THAT THE DATA YOU RECEIVE FROM YOUR EQUIPMENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND THAT YOUR USE AND/OR RELIANCE ON SUCH DATA IS SOLELY AT YOUR OWN RISK.

**14. Term and Termination.**

14.1 *Term.* These Terms will apply to you as of the Effective Date, and, unless terminated earlier as provided for herein, will remain in effect for as long as you are using the Service. Subscription Terms will automatically renew (and we may automatically invoice you) for additional Subscription Terms of equivalent length, unless one party provides written notice to the other at least thirty (30) days prior to the expiration of the then-current Subscription Term that it wishes to terminate the applicable Order Form at the end of the then-current Subscription Term. Portions of Order Forms that you use to order Professional Services will not automatically renew. We reserve the right to modify the Fees for each renewal Subscription Term, provided that we give you at least sixty (60) days' prior written notice of the modification.

14.2 *Termination for Cause.* Either party can terminate these Terms or any Order Form for cause immediately upon written notice to the other if the other party breaches these Terms or the applicable Order Form and fails to cure the breach within thirty (30) days of receiving written notice of it from the non-breaching party. We reserve the right to terminate these Terms or any Order Form for cause immediately upon written notice to you, and without giving you a cure period, if you breach any of these Terms relating to our intellectual property (including your compliance with the access grant and any restrictions) or our Confidential Information (defined below).

14.3 *Effect of Termination.* When these Terms or any Order Form or Subscription Term terminates or expires: (i) you will no longer have the right to access or use the Service; (ii) if you owed us any Fees prior to such termination/expiration, you will pay us those Fees immediately; (iii) you will return all Equipment to us or our designee in good condition (reasonable wear and tear excepted), in the shipping boxes that we provide to you, within thirty (30) days of the date of termination; and (iv) each of us will promptly return to the other (or, if the other party requests it, destroy) all Confidential Information belonging to the other. Sections 3, 6, 8, 11, 12, 13.3, 14.3, and 15 through 19 of these Terms will survive termination for any reason.

## 15. **Limitation of Liability.**

15.1 *Waiver of Consequential Damages.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, DATA, GOODWILL, OR ANY INTERRUPTION OF BUSINESS) OR FOR THE COST OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR ANY ORDER FORM, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 *Limitation of Total Liability.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR TOTAL CUMULATIVE LIABILITY TO YOU OR ANY THIRD PARTY UNDER THESE TERMS AND ANY ORDER FORM, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE TOTAL AMOUNT OF ANY FEES YOU HAVE ACTUALLY PAID TO US UNDER THESE TERMS OR ANY ORDER FORM DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE ACCRUAL OF THE FIRST CLAIM. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

15.3 *Basis of Bargain.* You understand and agree that we have set our prices and entered into these Terms with you in reliance upon the limitations of liability set forth in these Terms, which allocate risk between us and form the basis of a bargain between the parties. Specifically, you acknowledge that the limitations of liability set forth in this Section 15 will be given full effect, even if any remedy specified in these Terms is deemed to have failed of its essential purpose.

16. **Indemnification.** You will defend, indemnify, and hold us harmless from and against any claims that may arise out of or that are based upon your use of the Service, the Data, or the Equipment, or your breach of any of these Terms.

## 17. **Confidentiality.**

17.1 *Definition of Confidential Information.* For the purposes of this Agreement, "Confidential Information" means any business or technical information that either one of us discloses to the other, in writing, orally, or by any other means, and including things like computer programs, code, algorithms, data, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, and product development plans, names and expertise of employees and consultants, and customer lists. For the purposes of these Terms: (i) any non-public aspects of the Service (including, without limitation, the results of any performance tests in relation to the Service) will be deemed to be our Confidential Information, regardless of whether they are marked as such; and (ii) the pricing agreed upon between the parties in each Order Form is the Confidential Information of both parties.

17.2 *Restrictions on Use and Disclosure.* Neither of us will use the other party's Confidential Information, except as permitted under these Terms. Each of us agrees to maintain in confidence and protect the other party's Confidential Information using at least the same degree of care as it uses for its own information of a similar nature, but in all events at least a reasonable degree of care. Each of us agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other's Confidential Information, including, without limitation, disclosing Confidential Information only to its employees, independent contractors, consultants, and legal and financial advisors (collectively, "Representatives"): (i) with a need to know such information, (ii) who are parties to appropriate agreements sufficient to comply with this Section 17, and (iii) who are informed of the nondisclosure obligations imposed by this Section 17. Each of us will be responsible for all acts and omissions of our Representatives. The foregoing obligations will not restrict either of us from

disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable them to contest such order or requirement.

17.3 *Exclusions.* The restrictions set forth in Section 17.2 will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other party's Confidential Information.

18. **Governing Law and Jurisdiction.** These Terms will be governed by and interpreted in accordance with the laws of the State of California, without giving effect to any principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. Any legal action or proceeding arising under, related to or connected with these Terms or your access to or use of the Service will be brought exclusively in the federal (if they have jurisdiction) or state courts located in San Mateo County, California, and the parties irrevocably consent to the personal jurisdiction and venue of such court(s). If a party initiates any proceeding regarding these Terms, the prevailing party to such proceeding is entitled to reasonable attorneys' fees and costs.

19. **Miscellaneous.**

19.1 *Assignment.* You may not assign or transfer any of your rights or obligations under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent, and any attempt by you to do so without our consent will be null and void. We can assign these Terms in their entirety, upon notice to you but without the requirement to obtain consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our business or assets.

19.2 *Severability.* In the event that any provision of these Terms is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the court will modify or reform these Terms to give as much effect as possible to that provision. Any provision that cannot be modified or reformed in this way will be deemed deleted, and the remaining provisions of these Terms will continue in full force and effect.

19.3 *Electronic Communications.* You agree that we can give you notices pursuant to these Terms electronically, which may include an email to the email address you provide to us as part of your registration for the Service. These notices can be about a wide variety of things, including responding to your questions, requests for additional information, and legal notices. You agree that such electronic notices satisfy any legal requirement that such communications be in writing. An electronic notice will be deemed to have been received on the day the email is sent to you, provide that the email is the same as the email address you provided as part of your registration for the Service.

19.4 *Compliance with Laws.* You agree to comply with all laws and regulations applicable to your use of the Service, Data, and Equipment, including, without limitation, all applicable export and import regulations. You are responsible for obtaining all required permissions for any export, import or use of the Service, Data, or Equipment in the jurisdictions in which you choose to operate.

19.5 *Waiver.* A party's obligations under these Terms can only be waived in a writing signed by an authorized representative of the other party, which waiver will be effective only with respect to the specific obligation described. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

19.6 *Force Majeure.* Except for a party's obligation to make payments, each party will be excused from performing under these Terms to the extent that the party is unable to perform due to extraordinary causes beyond its reasonable control. That might include things like natural disasters or emergencies, strikes, lockouts, riots, acts of war, epidemics, or communication line and/or power failures.

19.7 *Independent Contractors.* The parties are independent contractors with respect to the subject matter of these Terms. Nothing contained in these Terms will be deemed or construed in any manner whatsoever to create a partnership, joint venture, employment, agency, fiduciary, or other similar relationship between us, and neither of us can bind the other contractually.

19.8 *Entire Agreement.* These Terms, including each Order Form, constitute the entire agreement and understanding of the parties with respect to its subject matter, and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties with respect to its subject matter (including, without limitation, prior versions of these Terms). Any terms or conditions that you send to us (whether as part of a purchase order, online terms, or any other document) that are inconsistent with or in addition to these Terms are hereby rejected by Akua, and will be deemed void and of no effect.

19.9 *Third Party Hosting Partners.* You understand that we may use third-party vendors and hosting partners to provide the necessary networking, storage, and related technology required to make the Service available to you, and you agree that Akua is not and will not be liable or responsible for the acts or omissions of such third-party vendors or hosting partners.

19.10 *Publicity.* You agree that we have the right, after getting your permission, to use your name and logo on our website and our marketing materials, for the purposes of identifying you as an Akua customer and describing your use of the Service. You also agree that we may, after getting your permission: (i) issue a press release identifying you as an Akua customer; (ii) inform other potential customers that you are a user of the Service; and (iii) identify you as a customer in other forms of publicity (including, without limitation, case studies, blog posts, and the like).