GIS4Mobile

GIS4Mobile ApS General Terms and Conditions

1. BACKGROUND

These General Terms and Conditions form part of the agreement between the customer and GIS4Mobile ApS ("GIS4Mobile"). These General Terms and Conditions apply to all the services provided to the customer by GIS4Mobile, unless specifically agreed otherwise in writing.

The services are offered exclusively to businesses, public authorities and other professional users acting in the course of their trade, business or profession. The services are not offered to consumers, and by accepting an offer or creating an account, including as a Trial User, the customer confirms that it is not acting as a consumer.

These General Terms and Conditions also apply to services provided by GIS4Mobile to customers using GIS4Mobile services under a free trial offer ("Trial Users").

These General Terms and Conditions should be read in conjunction with GIS4Mobile's Service Level Agreement and Acceptable Use Policy, both of which are available on GIS4Mobile's website, GIS4Mobile's Data Processing Agreement, which is provided to the customer together with the offer or order confirmation, and any contract for the provision of services specifically entered into between the customer and GIS4Mobile.

These General Terms and Conditions, the Service Level Agreement, the Acceptable Use Policy and the Data Processing Agreement are incorporated into every offer and order confirmation issued by GIS4Mobile, and the customer accepts them by accepting the offer or order confirmation.

GIS4Mobile may amend these General Terms and Conditions, the Service Level Agreement and the Acceptable Use Policy by giving the customer at least 30 days' written notice by e-mail to the customer's registered contact address. Amendments required by law, or which are not to the customer's detriment, may take effect with shorter notice. If an amendment is to the customer's material detriment, the customer may terminate the agreement with effect from the date the amendment takes effect by giving written notice before that date, and GIS4Mobile shall refund a pro rata amount of any prepaid fees for the period after termination.

2. COMPANY DETAILS

GIS4Mobile has the following address and company details:

GIS4Mobile ApS

Solmarksvej 20

DK8240 Risskov

Denmark

Company registration number (CVR nr.): 34 72 39 74

Email address: mail@gis4mobile.com

The customer must provide GIS4Mobile with information about any change in its status such as change of address, change of contact or change in the company's status.

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3. OFFER, ORDER CONFIRMATION AND DELIVERY

An offer made by GIS4Mobile is only valid when made in writing, and will remain open for acceptance for 30 days, unless a shorter period is stated in the offer.

The customer can only rely on an offer addressed individually in writing to the customer. Information which GIS4Mobile has published on its website, in pricelists or other promotional material is not binding on GIS4Mobile.

Changes to a written offer or order confirmation will only be valid once they have been confirmed in writing by GIS4Mobile.

An order can be placed with GIS4Mobile in many ways but is only binding when accepted by GIS4Mobile with a written order confirmation.

When placing an order the customer is obliged to provide the correct company name, company registration number, address, zip code, telephone number and e-mail address and enter relevant contact information.

The customer shall check the order confirmation upon receipt and immediately inform GIS4Mobile in writing of any errors.

GIS4Mobile undertakes to treat all customer information confidentially.

Delivery of services will be made in accordance with the specific agreement made between GIS4Mobile and the customer.

4. PRICES AND PAYMENT

Prices stated in an offer or published on GIS4Mobile's website, in pricelists or other promotional material are exclusive of value added tax unless otherwise specifically stated.

GIS4Mobile reserves the right to vary prices in accordance with developments in the consumer price index, upon 1 month's written notice to the customer.

GIS4Mobile is entitled to invoice for the services to be provided to the customer once GIS4Mobile has accepted an order with a written order confirmation.

When the customer buys hosting services and maintenance support services for the first time, the annual maintenance fee(s) will be adjusted pro rata according to the number of days remaining in the calendar year. GIS4Mobile will thereafter invoice the annual maintenance fee(s) in January of each year.

Payment is due 8 days from the date of the invoice.

When payment is not received by the date that it is due, GIS4Mobile is entitled to claim interest on the unpaid amount at the rate of 1.75% per month. GIS4Mobile also reserves the right to withhold services or parts of services until such time as payment is made. If payment is not received within 30 days of a written reminder to do so, GIS4Mobile is entitled to immediately terminate the agreement with the customer.

5. HOSTING SERVICES

Hosting Services are provided by GIS4Mobile on a shared virtual server. GIS4Mobile reserves the right to move the hosting services, including but not limited to different servers, at any time at its sole discretion.

The customer acknowledges and accepts that GIS4Mobile may subcontract all or any part of the hosting services to a third party provider. GIS4Mobile reserves the right to change the third party provider at any time provided that such a change will not materially affect the nature or quality of the hosting services.

The customer acknowledges and accepts that the Service Level Agreement does not apply to the provision of hosting services, and that no service credits are available to the customer for any failure of the hosting services.

The customer shall not perform any testing on the hosting services without prior permission from GIS4Mobile.

The customer shall use the hosting services in accordance with applicable law and GIS4Mobile's Acceptable Use Policy as in force from time to time.

The customer is responsible for procuring and maintaining adequate network connections and telecommunications links from its systems to enable GIS4Mobile to provide the hosting services. The customer acknowledges and accepts that GIS4Mobile shall not be liable for any delays or failures resulting from or relating to the customer's network connections or telecommunications links or caused by the internet.

Following termination of the agreement between the customer and GIS4Mobile for any reason, GIS4Mobile may, if agreed with the customer, provide data migration services to the customer or a third party provider elected by the customer. GIS4Mobile shall notify the customer in writing following completion of the removal of the customer's data from the hosting environment. All data migration services are chargeable at GIS4Mobile's consulting rates as in force from time to time.

6. INDEMNITY

GIS4Mobile's Acceptable Use Policy applies to all customers, including Trial Users, and their use of GIS4Mobile's services.

The customer shall indemnify GIS4Mobile and its employees against any third party claim, including reasonable litigation costs, to the extent that the claim arises from (a) data or material uploaded, stored or transmitted by the customer or its users, (b) the customer's or its users' breach of the Acceptable Use Policy, or (c) the customer's or its users' breach of applicable law. This indemnity does not apply to the extent that the claim is caused by GIS4Mobile's own breach of the agreement, negligence or wilful misconduct.

GIS4Mobile shall notify the customer in writing without undue delay of any such claim and shall not settle the claim without the customer's prior written consent, which shall not be unreasonably withheld.

7. OPERATING COSTS

The use of GIS4Mobile may result in charges from other parties such as, but not limited to, telephone operators. The customer acknowledges that any such charges are payable by the customer and that GIS4Mobile shall not be responsible for any such charges.

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8. FORCE MAJEURE

GIS4Mobile is not responsible for service unavailability caused by factors outside GIS4Mobile's reasonable control (for example, natural disaster, war, acts of terrorism, strike or lockout, sabotage or a network or equipment failure external to GIS4Mobile's services, including a failure of the customer's equipment).

9. LIMITATION ON LIABILITY

Nothing in these General Terms and Conditions limits or excludes GIS4Mobile's liability for loss or damage caused by its gross negligence or wilful misconduct, or any other liability which cannot be limited or excluded under applicable law.

Services provided to Trial Users are provided free of charge and "as is". Subject to the first paragraph of this clause 9, GIS4Mobile's total liability towards a Trial User shall not exceed DKK 1,000.

The total liability of GIS4Mobile in contract or for negligence, misrepresentation or otherwise arising in connection with these General Terms and Conditions and/or any specific agreement entered into between GIS4Mobile and customers (other than Trial Users) shall be limited to an amount equal to the sum of the start-up license fee(s) and the latest annual maintenance fee(s) invoiced by GIS4Mobile to the customer.

GIS4Mobile shall not be liable for any loss of profits, loss of business, loss of anticipated savings (whether direct or indirect), or any indirect or consequential loss or damage suffered by the customer or Trial Users in connection with these General Terms and Conditions or any specific agreement entered into between GIS4Mobile and the customer or Trial Users.

GIS4Mobile shall implement appropriate technical and organisational security measures as set out in the Data Processing Agreement. The customer shall take reasonable measures to back up its own data, software, information and files. Subject to the first paragraph of this clause 9 and to the Data Processing Agreement, GIS4Mobile shall not be liable for loss of data, except to the extent that the loss is caused by GIS4Mobile's breach of its obligations under the Data Processing Agreement, and in that case only within the limitation of liability set out in this clause 9.

GIS4Mobile makes no express warranty, and excludes to the fullest extent permitted by law implied warranties, as to the software application(s), the hosting services and the maintenance support services' quality, fitness for purpose or otherwise.

10. MONITORING

GIS4Mobile may monitor technical usage data, such as load, response times and error logs, to the extent necessary to operate, secure and improve the services. GIS4Mobile does not access the content of the customer's data except where necessary to provide support requested by the customer, to investigate a suspected breach of the Acceptable Use Policy, or where required by law. Any processing of personal data takes place in accordance with clause 14 and the Data Processing Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

The customer acknowledges that all intellectual property rights (including but not limited to rights in computer software, rights in databases, rights in designs, patents, trademarks, logos, company names, brands, copyright and know-how) arising out of or associated with the software application(s), hosting services and maintenance support services provided to the customer belong at all times to GIS4Mobile or GIS4Mobile's licensor.

Nothing in these General Terms and Conditions shall transfer any such intellectual property rights to the customer.

The customer agrees that it will not copy, reproduce, alter, modify, reverse engineer or create derivative software applications from GIS4Mobile's software application(s).

GIS4Mobile is not aware that the software application(s), hosting services or maintenance support services infringe any third party's intellectual property rights. If an infringement claim is alleged or threatened by any third party the customer must inform GIS4Mobile immediately in writing. The customer must make no admission as to liability or take any action in such a claim without GIS4Mobile's prior written consent. The customer must allow GIS4Mobile to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement and the customer must give GIS4Mobile such reasonable assistance as may be requested.

If an infringement claim is alleged or threatened against either GIS4Mobile or the customer, or if GIS4Mobile has reason to believe that the software application(s), hosting services and/or maintenance support services may infringe any third party's intellectual property rights, GIS4Mobile may at its sole discretion, (i) procure such license, authorization or consent as is necessary to enable the customer's continued use of the software application(s), and/or hosting services (ii) modify or replace the software or services as necessary to avoid infringement without any material adverse effect on the functionality of the software application(s) or services, or (iii) terminate this contract and refund a pro rata amount of the annual maintenance fee(s).

12. TERM AND TERMINATION

These General Terms and Conditions shall continue to apply to the agreement between GIS4Mobile and the customer until such time as the agreement is terminated.

The customer can terminate its agreement with GIS4Mobile by sending written notice to mail@gis4mobile.com before the end of November each year. The agreement will then terminate at the end of the relevant calendar year. The prepaid fee(s) are non-refundable no matter when the customer chooses to send written notice of termination of the contract, except as set out in clauses 1 and 11.

This contract may also be terminated immediately by either party in the following circumstances:

a) if the other Party is in material breach of its obligations under this contract and the breach is either incapable of remedy or, if capable of remedy, the other Party fails to remedy the breach within 30 days of written notice to do so,

b) if the other Party ceases to do business, or

c) if the other Party goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

Upon termination of the agreement all licenses granted to the customer shall terminate, and the customer shall cease all use of the software application(s), and the hosting service and shall destroy all copies of the software application(s).

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13. APPLICABLE LAW AND JURISDICTION

These General Terms and Conditions, and any dispute or claim arising out of or in connection with them, or the subject matter or formation of an agreement between the customer and GIS4Mobile (including non-contractual disputes or claims) shall be governed by and construed in accordance with Danish law.

If a dispute arises between the customer and GIS4Mobile both parties shall seek to resolve the dispute amicably. In the event that the dispute cannot be resolved amicably, the Danish courts shall have exclusive jurisdiction to settle the dispute.

14. PERSONAL DATA

To the extent GIS4Mobile processes personal data on behalf of the customer, GIS4Mobile acts as data processor and the customer as data controller. The parties' rights and obligations in this respect are set out in GIS4Mobile's Data Processing Agreement, which forms part of the agreement and takes precedence over these General Terms and Conditions in case of conflict concerning the processing of personal data. GIS4Mobile's processing of personal data for its own purposes, such as invoicing and customer administration, is described in GIS4Mobile's privacy policy.