



## **Terms of Service**

Terms of Service for COIOTE DM for  
Developer, StartUp & Business Tiers

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These Terms of Service define terms and conditions for the use of Coiote DM designed and owned by AVSystem sp. z o.o., a company incorporated under the laws of Poland, with its registered seat in Krakow, at Radzikowskiego 47 d, 31-315 Krakow, Poland, entered into the National Court Register held by the District Court for the City of Krakow, XI Commercial Section of the National Court Register, under the number KRS 0000999781, tax identification number (NIP) 677-228-04-51, statistical number (REGON) 120362919.

## ● DEFINITIONS

The terms described below shall have the following meaning for the purpose of this Terms of Service:

**Account** means an account enabling the User to access and use Platform;

**Agreement** means this Terms of Service with its appendices, constituting whole contract between the Parties;

**Business Day** means every day from Monday to Friday, excluding public holidays in Poland;

**Business Hours** means hours from 08:00 to 17:00 CET in Business Days;

**Business Tier** means Platform within the scope of functionalities accessible for the User upon payment of relevant fee;

**Data** means any and all data related to User's account and uploaded on Platform by User's IoT Device(s);

**Developer Tier** means Platform within the scope of functionalities accessible for the User without payment;

**IoT Device(s)** means a device designed, manufactured and/or owned by the User using LwM2M protocol for its management, FOTA or telemetry data used by User for delivering specific services for its customers;

**Payment Operator** – Stripe Payments Europe, Ltd. with its registered seat in Dublin, Ireland, company DUNS number 985420235, an entity processing and finalizing card payments (if such method has been chosen by User to pay for Business Tier). AVSystem reserves the right to change an entity being Payment Operator, which does not constitute change to these Terms of Service. Payment Operator shall in each case be an entity entitled to provide payment services accordingly to its status required by applicable law;

**Personal Data** means data within the meaning of Article 4 subparagraph (1) of Regulation 2016/679, i.e. any information relating to an identified or identifiable natural person;

**Platform** means Coiote IoT Device Management provided by AVSystem in Software as a Service model, either in Business Tier or Developer Tier, enabling operating and managing User's IoT Devices;

**Processing of Personal Data** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction within the meaning of Article 4 subparagraph (2) of Regulation 2016/679;

**Regulation 2016/679** means Regulation (EU) 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) (OJ L 119, 4.5.2016, p. 1);

**User** means an entity accepting these Terms of Service and using Platform in the scope enabled by AVSystem for usage by User(s) on Developer Tier or Business Tier basis;

## I. GENERAL PROVISIONS

1. AVSystem is the exclusive owner of the Platform and all relevant IPR thereto and being a technology company specializing in IoT device management, has all needed and expected competencies to provide Platform to the User. All Platform services provided by AVSystem shall be performed with due care, taking into consideration the professional nature of the activities. AVSystem does not guarantee that the Platform will perform error free or uninterrupted.
2. These Terms of Service govern a usage by the User Platform's Business Tier and/or Developer Tier, subject to User's decision upon creating an Account. User accepts these Terms of Service by creating an Account and is obliged to comply with them.
3. For avoidance of doubt, User is allowed to move from Developer Tier to Business Tier and from Business Tier to Developer Tier within relevant termination period.
4. For the sake of the Account's safety User should:
  - a. use all reasonable endeavors, including available security measures to prevent unauthorized access to Platform; and
  - b. promptly update the registration details of the Account if it has changed or is no longer valid, accurate or complete.
5. AVSystem is providing Platform for User's use for testing and operational purposes, provided that Developer Tier is restricted to maximum of 10 (ten) IoT Devices connected to the Platform.

## II. USER'S OBLIGATIONS

1. User undertakes to cooperate with AVSystem in proper performance of AVSystem's obligations. In particular, the User shall provide AVSystem with all necessary and/or requested technical and professional information required for providing all Platform services.
2. User is obliged to:
  - a. use Platform within the scope set out in Terms of Service and intended purpose;
  - b. promptly notify AVSystem of any of Platform's issues;
  - c. timely pay AVSystem's remuneration if obliged by these Terms of Service;

- d. use all reasonable endeavors to protect Platform from any unauthorized access. The User will promptly inform AVSystem about any security concerns or incidents related to the Platform;
3. User is prohibited from:
  - a. using Platform in any matter that causes or may cause damage to Platform or impairment of its availability or accessibility;
  - b. using Platform in any unlawful or illegal matter or purpose;
  - c. accessing the Platform's code (including object code, intermediate code and source code);
  - d. distributing any viruses, worms, spyware, adware or other harmful or malicious software in the Platform,
  - e. making any alteration to Platform, unless permitted by AVSystem, or connecting IoT devices which are not managed by User;
  - f. performing operations being a threat to Platform's stability.
4. User is solely responsible for:
  - a. adding IoT Devices to the Platform, uploading any other content as required for normal operation of the Platform;
  - b. integrating its software with the Platform if necessary;
  - c. doing back-up copies of the Data, unless separately agreed otherwise;
  - d. content of any and all Data stored by User or User's User on the Platform.
5. User acknowledges that the performance of this Agreement involves read-only access to data stored in IoT Devices, solely related to AVSystem's monitoring tool used for improving performance of the services. AVSystem will use this data only for the purpose set out above. The Parties acknowledge this may include Personal Data stored or used by User and in all cases any such Personal Data and will be processed in accordance with the provisions of these Terms of Service.

### III. USER SUPPORT SYSTEM

1. All Issues occurring in Platform shall be reported by User via Jira Service Manager (support.avsystem.com) or in case it is unavailable, via e-mail at support-iot@avsystem.com. Regardless of issues, User may address requests regarding Platform or its functionalities via User Support System.
2. User shall report all issues occurring while using the Platform in User Support System. AVSystem shall undertake commercially reasonable efforts to investigate and resolve all Issues discovered in Platform and notified by User and/or provide a temporary solution.
3. Resolution of an issue shall be notified by AVSystem in User Support System.
4. AVSystem has the right to update, upgrade, change, modify, improve etc. the Platform at any time and will have the right to discontinue any of its functionalities.

### IV. PRICES AND PAYMENTS

1. Prices and payment are applicable in case User uses Business Tier or decides to move from Developer Tier to Business Tier.
2. For the use of Business Tier User is charged monthly fee accordingly to price list available on AVSystem's website <https://www.avsystem.com/products/coiote-iot-device-management-platform/>.
3. The payments are to be made by card via Payment Operator. The default billing period is one (1) calendar month.
4. User hereby consents for AVSystem to provide User's email address to Payment Operator and for User's card to be debited with monthly payments accordingly to price list and User's usage of services. Invoices shall be issued by Payment Operator, accordingly to Payment's Operator terms and conditions. AVSystem holds token identifying payment instrument, whereas all the data regarding such instrument are processed by Payment Operator based on AVSystem's order.
5. Successful card payment results in transfer of due payment for Payment Operator's account. Payment Operator is therefore obliged to transfer the payment directly to AVSystem. AVSystem is not a party in payment process itself. Payment is processed by Payment Operator accordingly to binding legal regulations.
6. In case of unsuccessful card payment transaction, resulting in due payment on User's side, User shall be notified by Payment Operator via email.
7. After each calendar month, AVSystem will issue monthly billing calculations including all actual charges. Calculation will be delivered electronically to User via email. All payments are made in arrears therefore, no refund or cancellation applies to User.
8. Each of the Parties shall be responsible for paying taxes applicable to the Party.

### V. TERM AND TERMINATION

1. Parties are bound by these Terms of Service for unidentified period of time, subject to below.
2. Each Party may terminate this Agreement upon 30 (thirty) days prior notice, written or e-mailed to the other Party, effective by the end of next calendar month. The above applies accordingly to moving from one version of the Platform to the other.
3. If User is:

- in breach of any material obligation of these Terms of Service, or
  - responsible for allowing unauthorized use of Platform, or
  - late with any payment for a period exceeding two (2) weeks,
- and provided that User has been notified by AVSystem to remedy above mentioned defaults, AVSystem is entitled to:
- a. block User's access to Platform until any and all issues mentioned above are remedied, or
  - b. terminate these Terms of Service with immediate effect,
- none of which however will affect User's liability for AVSystem's due payments (if any), damages (if any occur) and non-disclosure obligations.
3. Termination of Terms of Service shall not limit either Party from pursuing any other remedies available to it, including injunctive relief.

## VI. LIABILITY

1. The Parties bear responsibility for breach of the provisions set out in Terms of Service on the terms specified below and in accordance with applicable law.
2. AVSystem shall in no case be liable in respect of:
  - a. any loss of benefits (i.e., profits or anticipated savings; revenue or income; business opportunities etc.),
  - b. indirect, incidental, special, punitive, or consequential damages,
  - c. any loss or corruption of any data, database etc. stored in the Platform as well as any content stored in the Platform, and
  - d. non-compliance or defects in the User's software and/or network infrastructure as long as these are not the result of any fault on the part of AVSystem.
3. Neither Party shall be liable to the other Party in respect of any losses arising out of a Force Majeure.
4. The total and aggregate AVSystem's liability towards User is limited to:
  - a. amount of 500 US dollars, applicable for User(s) using Developer Tier;
  - b. equivalent of 20% of total amount paid by the User to AVSystem during the past year from the occurrence of the event being subject to liability, applicable for User(s) using Business Tier;

The foregoing exclusion or limitation of liability shall not apply to the extent prohibited by applicable law.
5. User hereby agrees to defend, indemnify and hold AVSystem harmless from any and all claims arising as a result of:
  - a. the gross negligence, willful misconduct or unlawful act of the User;
  - b. any unauthorized use by the User, or any third parties that User is liable for of any trademarks, copyrights, or patents related to the Platform;
  - c. any unauthorized warranty or representation made by the User relating to the Platform that is inconsistent with the terms and conditions herein;
  - d. any unauthorized replication, marketing, or distribution of the Platform by the User;
  - e. any liability arising from any data or content stored in the Platform by User;
  - f. any claim against AVSystem arising from any of the User's act or omission in violation of applicable export, shipping, and related laws;
  - g. any claims against AVSystem arising from any defects in User's network infrastructure if these are not caused by the Platform.

## VII. CONFIDENTIAL INFORMATION

1. During mutual cooperation, Parties may gain access to information that is confidential to one another. "Confidential Information" means information regarding a Party that is not generally known to the public, which includes but not limited to, whether or not available to the public, intellectual property, trade secrets, know-how, financial information, data that relate to, are embodied in or are associated with the disclosing Party's products or the present or future products, technology, services, business, prices and costs, or affairs of the disclosing Party. Confidential Information may be disclosed orally, in writing or in any other recorded or tangible form. Information will be considered to be Confidential Information under these Terms of Service if it (i) is marked as confidential by the disclosing Party at the time of disclosure, (ii) is unmarked but treated as confidential by the disclosing Party at the time of disclosure or (iii) is disclosed whether inadvertently or not, whether by direct or indirect oral or written communication or mistake to the receiving Party and the disclosing Party knows or has reason to know such information is confidential, a trade secret or proprietary information of the disclosing Party.
2. Parties undertake:
  - a. to disclose only information that is required for the performance of Parties' obligations;
  - b. to maintain all Confidential Information as confidential and exercise reasonable measures to prevent unauthorized access, use or disclosure of the same, but under no circumstances use less than reasonable care; and
  - c. not to disclose the Confidential Information to any third party other than contractors or advisors, etc. who have a legitimate need to know for the purposes contemplated by an applicable agreement and who are bound by written agreements or statutory obligations that are at least as protective of the Confidential Information as set out hereunder;

3. Any Party may disclose the other Party's Confidential Information to its officers, directors, employees, subcontractors, auditors or professional advisers who have a legitimate need-to-know as a result of their contribution to the performance of its obligations and who are obligated to protect such Confidential Information pursuant to terms and conditions no less stringent than those set out hereunder. In any event, the receiving Party shall be responsible for any breach of this Agreement by any of its officers, directors, employees, auditors or professional advisers and shall take all measures to restrain any prohibited or unauthorized disclosure or use of the Confidential Information.
4. The Party's Confidential Information shall not include information that:
  - a. is or becomes a part of the public domain through no act or omission of the other Party;
  - b. was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
  - c. is lawfully disclosed to the other Party by a third party without restriction on the disclosure; or is independently developed by the other Party;
  - d. is required to be disclosed pursuant to applicable law, provided the Party uses reasonable efforts to give the other Party advance notice of such required disclosure to enable such Party to seek a protective order or otherwise prevent or restrict such disclosure; or
  - e. is disclosed with the prior written consent of the Party.
5. The obligations specified in this paragraph are binding to Parties for a period of validity of these Terms of Service and five (5) years following its expiration or termination.
6. The Confidential Information of each Party remains the property of such Party and upon the expiration or termination of this Agreement will be promptly returned to the owner, or at the owner's request, destroyed.

#### VIII. INTELLECTUAL PROPERTY RIGHTS

1. User acknowledges that AVSystem owns and reserves all right, title and interest in and to the Platform and all hardware, software and other items used to provide the Platform (if any). No title to or ownership of any proprietary rights related to the Platform is transferred to User pursuant to these Terms of Service.
2. User shall have a non-exclusive, non-transferable and revocable license to use the Platform for the purpose set out in Section I above.
3. User agrees that it will comply with any technical requirements and limitations of the Platform and that it will not, nor will User cause or permit others to:
  - a. reverse engineer, decompile, disassemble, modify, adapt or translate any part of the Platform and its functionalities, or create derivative works based on any part of the Platform and its functionalities, except and only to the extent that applicable law expressly permits, despite this limitation or except and only to the extent that AVSystem gives prior written consent;
  - b. remove, obliterate, destroy, minimize, block or modify any logos, trademarks, copyright, digital watermarks, or other notices of AVSystem;
  - c. work around any technical limitations in the Platform or access or use the Platform in order to create or support, and/or assist a third party in creating or supporting, products or software and/or services competitive to those offered by AVSystem;
  - d. disseminate or otherwise make available any of the Platform or materials resulting from using of the Platform;
  - e. perform or disclose any benchmark or performance tests of the Platform without AVSystem's prior written consent;
  - f. transfer, license, sublicense, rent, lease, sell, lend, distribute, host, outsource, disclose, permit timesharing or service bureau use, assign, or otherwise commercially exploit or make the Platform available to any other person or entity without the prior written consent of AVSystem.
4. User agrees to include, in all related materials, all applicable proprietary rights' notices and any other notices of AVSystem, where relevant, as they appear in the Platform if these are permissible under the laws binding the User.
5. User hereby authorizes AVSystem to use the User's name, logos and/or trademarks in marketing purposes of AVSystem (references, website display, press information concerning conclusion of the Agreement) subject to prior written approval of User to each such use. It is hereby declared that the above granted right to use does not imply in any manner whatsoever the transfer of ownership and the User retains sole ownership of its' intellectual property. Upon the User's request, AVSystem shall immediately remove from its marketing material any reference to the User and any logos and/or trademarks that are subject to User's rights.

#### IX. PERSONAL DATA

1. User represents that it is the controller of Personal Data stored in IoT Devices connected to Platform within the meaning of Article 4 subparagraph (7) of Regulation 2016/679, i.e., the entity which, alone or jointly with others, determines the purposes and means of the processing of Personal Data necessary in order to perform the Agreement. User also guarantees that is entitled to process Personal Data.
2. AVSystem represents that it is the processor within the meaning of Article 4 subparagraph (8) of Regulation 2016/679 under the Agreement, which means that the processor is to process Personal Data on behalf of User.

3. For providing Services for the User, based on the Agreement and for the period of the Agreement, the User is entrusting AVSystem Processing of Personal Data stored in AVSystem's software used by the User. The nature of the entrusted Processing of Personal Data are the operations or sets of operations performed on Personal Data by AVSystem. AVSystem may Process Personal Data exclusively within the scope and for the purpose of performing the Agreement.
  4. The scope of Personal Data processed by AVSystem under this Agreement covers the types of Personal Data and the categories of data subjects listed in Appendix 1 to the Agreement.
  5. Prior to commencing the Processing of Personal Data, AVSystem shall take measures securing Personal Data referred to in Article 32 of GDPR, and in particular:
    - a. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the breach of rights or freedoms of natural persons, AVSystem shall implement technical and organisational measures that guarantee the protection of the processed Personal Data to ensure a level of security appropriate to the risk. AVSystem shall appropriately document the implementation of these measures;
    - b. enable User, at the first request, to review the applied technical and organisational measures as well as the documentation related to these measures so that the processing is lawful, and to update these measures if necessary;
    - c. ensure that any natural person acting under the authority of AVSystem, who has access to Personal Data, does not process them except on instructions from User for the purposes and within the scope provided for in the services;
    - d. keep records of the individuals authorised to Process Personal Data that are being processed in connection with the performance of this Agreement;
    - e. maintain a record of all categories of processing activities carried out on behalf of User, as referred to in Article 30 subparagraph (2) of Regulation 2016/679, and make the record available to User on request, unless AVSystem is exempted from that obligation under Article 30 subparagraph (5) of Regulation 2016/679.
  6. AVSystem shall ensure that the individuals having access to the Processing of Personal Data will keep in confidentiality these Personal Data and methods of securing Personal Data, with the confidentiality obligation surviving the end of the performance of the Agreement and termination of the employment with the Processor. For that purpose, only persons who have signed confidentiality agreements shall be allowed by AVSystem to process the data. AVSystem shall note, in the register of persons, members of personnel authorised to process Personal Data.
  7. AVSystem shall assist User in discharging the obligations defined in Articles 32 to 33 of Regulation 2016/679; in particular, AVSystem undertakes to notify User of and carry out User's instructions relating to the applied safeguards of Personal Data and Personal Data breaches.
  8. If a breach of Personal Data should occur, AVSystem shall promptly notify User of Personal Data breach, no later than within 48 hours after becoming aware that a Personal Data breach has occurred.
  9. AVSystem, taking into account the nature of the processing, undertakes to assist User, when necessary and through appropriate technical and organizational measures, in discharging the obligation to answer the requests from the data subjects relating to the exercise of their rights defined in Articles 16 to 22 of Regulation 2016/679.
  10. User is entitled to verify AVSystem's compliance with the rules of Processing of Personal Data derived from Regulation 2016/679 and this Agreement by exercising its right to request providing of any information relating to the entrusted Personal Data, including information about the location in which AVSystem processes Personal Data. User shall also have the right, upon prior notice, to carry out audits or inspections of AVSystem with respect to the compliance of the processing operations with the law and the Agreement.
  11. AVSystem shall not engage another processor (hereby called 'Subprocessor') to carry out all or part of the Processing Data activities entrusted to AVSystem by User without the prior written authorization of User. Nevertheless, User acknowledges that AVSystem stores data within Google Cloud, therefore AVSystem is not obliged to gain any additional consent from User to use Google as a Subprocessor.
- X. FINAL PROVISIONS**
1. These Terms of Service or price list may be changed and/or altered by AVSystem anytime, providing prior email notice and posting the changed information and documents at the Coiote product website. New wording of Terms of Service will automatically enter into effect after said period, subject to provisions below. User acknowledges and accepts new wording with next logging into Account, yet if User shall not accept new Terms of Service and withhold the consent such action will constitute termination of the Agreement between the Parties.
  2. Neither Party shall be liable for such actions or omissions that arise from Force Majeure events.
  3. AVSystem may subcontract the performance of a part or the whole of the Terms of Service to a subcontractor. AVSystem is liable for actions or omissions of the subcontractor as for its own actions or omissions.
  4. If any term or provision contained in these Terms of Service shall be declared (or become) unenforceable, invalid or illegal (or if the Parties agree there is a risk that any terms or provision may be declared or become unenforceable invalid or illegal) for any reason whatsoever, then the provisions of these Terms of Service shall remain in full force and effect as if such Terms of Service had been executed without such term or provision. If such term or provision would be legally valid or enforceable if amended, the Parties shall consult together in good faith and agree in writing the scope and extent of any modification or amendment necessary to said provision in a manner reflecting original intention.

5. These Terms of Service shall be governed by and construed in accordance with Polish law, without regard to its principles of conflicts of laws.
6. Any amicable proceedings undertaken in connection with these Terms of Service shall be in English.
7. Any dispute arising out of or in connection with these Terms of Service shall be first resolved in an amicable way between the Parties. In case the Parties could not come to a conclusion within 3 (three) months from the date of the arising of the claim, the Parties are entitled to submit dispute concerning their claims to the Polish Chamber of Commerce Arbitration Court in Warsaw while the applicable arbitration rules shall be its Rules of Arbitration. In case of arbitration, three arbitrators shall be appointed and each Party bears its own arbitration costs, including attorney's fees. However, AVSystem is also entitled to submit a dispute concerning its claims to court having its jurisdiction over AVSystem's or User's registered seat. Nothing in this document shall limit the rights of AVSystem to initiate an action against User, regarding unauthorized use or other intellectual property infringement in any other jurisdiction where such unauthorized use or intellectual property infringement occurs.
8. The following appendices are attached to Terms of Service and constitute an integral part hereof:
  - Appendix 1 – Specification of Personal Data;

## **Appendix 1 to Terms of Service**

### **SPECIFICATION OF PERSONAL DATA**

For the purpose set out in paragraph 11 of Terms of Service Parties hereby acknowledge:

Processing of Personal Data concerns the following type(s) of data:

- Basic personal data,
- IP address,
- Email address

Processing of Personal Data concerns the following categories of data subjects:

- Employees and other members of User's personnel,
- User's customers