

Kogena - CobotMonitor

Terms and Conditions of Service

Thank you for using Kogena's CobotMonitor software!

The End-User License Agreement regarding the CobotMonitor software, available at <https://cobotmonitor.com/eula>, accepted by and binding for the Customer and Users (the "EULA") constitutes an integral part of these Terms and Conditions of Service (the "T&C").

Please read these T&C carefully before using CobotMonitor software and accepting or adhering to either these T&C or EULA.

These T&C are effective from April 1, 2021.

1. Definitions

- 1.1. "**Access**" means a single entitlement for a single User to use the Platform;
- 1.2. "**Account**" means an electronic service provided by Kogena at the Platform, by means of which the User can access the Platform and use the Services;
- 1.3. "**Agreement**" means the agreement between the Provider and the Customer for the provision of the Services, including the Software as a service, incorporating these T&C, the EULA, the Order, and all other operating rules, policies (including the Privacy Policy) and procedures that Kogena may publish from time to time on the Website;
- 1.4. "**Business Day**" means any day from Monday to Friday, other than a bank or public holiday in Poland;
- 1.5. "**Business Hours**" means hours between 08:00 and 17:00 CET on a Business Day;
- 1.6. "**Charges**" means the amounts payable by the Customer to the Provider under or in relation to the Agreement, as set out in the Order;
- 1.7. "**Cobot(s)**" mean collaborative Robots, being a robotic station;
- 1.8. "**Content**" means all content, including without limitation information, opinions, images, photographs, graphics, text, data, articles, software, applications, designs, features, or links to websites featured, displayed or posted on the Website or Platform by a User, a Customer, Kogena or other Provider, as well as other materials that are available on the Website, the Platform or otherwise available through the foregoing; Content also includes the Software, any part thereof and the Services. The "**User-Generated Content**" is Content, written or otherwise, created or uploaded by the Users; The "**Machine-Generated Content**" is Content, written or otherwise, created or uploaded by the Devices; as well as all data collected through Monitored Devices monitoring, in particular the Database;
- 1.9. "**Customer**" means an individual person, company, or organization that has concluded the Agreement;
- 1.10. "**Database(s)**" means the databases within the meaning of Polish Act on Protection of Data Bases of 27 July 1991 (unified text Journal of Laws of 2021, item 386), compiled using the data acquired through Monitored Devices monitoring, in particular Machine-Generated Content, as well as a result of providing the Services for the Customer, in particular User-Generated Content, both owned by the Customer (and regarding the Database comprised of the Machine-Generated Content – transferred upon Kogena under the EULA);
- 1.11. "**Defect**" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Software or any part thereof, but excluding any defect, error or bug caused by or arising as a result of: (i) an act or omission of the Customer, any User or one of the Customer's employees, officers, agents, suppliers or subcontractors; (ii) unauthorized interference into or unlawful use of any of the Software or a part thereof, End-Device(s), especially any Connector or Monitored Devices (iii) an incompatibility between the Software or a part thereof and any other system, application, program or

software incompatible with the Software or a or a part thereof (jointly a **“User-Generated Defect”**);

- 1.12. **“Distribution Agreement”** means a separate agreement, concluded as an addendum to the Agreement between Kogena and the Distributor, governing the scope of rights and obligations of the Distributor towards Kogena and the Users which purchase a Subscription through the Distributor;
- 1.13. **“Distributor”** means a Customer, who is granted an “official distributor” or “official reseller” status, who is eligible to further distribute and resell the Software to the Customers, bypassing Kogena; a “reseller” shall be construed and interpreted accordingly;
- 1.14. **“Documentation”** means the documentation produced by the Provider and made available on the Platform to the Customer specifying how the Software should be used, e.g. User’s Manual;
- 1.15. **“End-Devices”** means any industrial end-devices monitored by the Software, as agreed in the Order or allowing the Software to communicate two-way between the Monitored Devices and the Platform (the **“Connectors”**); the End-Devices in the form of Connectors may be either a property of the Customer or leased by the Provider to the Customer; the Connectors are destined for the installation of the Communicator and may come with it pre-installed;
- 1.16. **“ESA”** means the agreement for the provision of electronic services (notably an Account) concluded between Kogena and the User at the first login to the Platform;
- 1.17. **“Force Majeure”** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);
- 1.18. **“Implementation Fee”** means a remuneration payable by the Customer to the Provider for the successful Implementation;
- 1.19. **“Implementation”** means an on-site or remote implementation of the Software at the Customer’s premises, including preparation of the Services for provision, connection of all Monitored Devices with the Software and enabling the start of monitoring via the Software;
- 1.20. **“Kogena”** means Kogena Sp. z o.o. with its registered office in Wrocław at Plac Solny 15, 50-062 Wrocław, Poland (KRS: 0000721255) as well as all persons acting on its behalf;
- 1.21. **“License”** means the right to use the Software, granted to the Customer under the EULA;
- 1.22. **“Minimum Term”** means the period specified as such in the Order;
- 1.23. **“Models”** mean predictive models regarding the behaviour and day-to-day operation of Monitored Devices, created and developed in the basis of the Machine-Generated Content collected during the provision of the Services;
- 1.24. **“Monitored Devices”** means Robots (notably Cobots) and End-Devices, excluding Connectors;
- 1.25. **“Order”** means the Customer’s statement of will enter into Agreement, on the terms and conditions agreed upon with or confirmed separately by the Provider;
- 1.26. **“Overtime Support”** means any support and maintenance services provided or to be provided by Kogena or its nominee to the Customer, in particular due to the occurrence of a User-Generated Defect;
- 1.27. **“Platform”** or **“CobotMonitor”** means the web application made available to Customers in a SaaS model at <https://cobotmonitor.com>, its subpages and subdomains, a web application allowing Users to access, retrieve and visualize collected data, manage the monitoring range of Monitored Devices , as well as to customize the Platform, to the extent permitted;
- 1.28. **“Privacy Policy”** – the document adopted by Kogena and available on the Website at kogena.com, describing the detailed rules for the processing and protection of all personal data;
- 1.29. **“Provider”** means Kogena or the Distributor, as the case may be;

- 1.30. "**Robot(s)**" means a mechanical device (machine) including a computer program or system, in which a program controls such mechanical device or its peripherals to automatically perform a specific, pre-programmed task;
- 1.31. "**Services**" mean all services rendered by the Provider towards the Customer under the Agreement, as specified in the Order, main part of which are the License under the EULA, granting of an access to the Platform, creation, and maintenance of the Accounts of all Users, as well as all other services provided through electronic means of communication via the Website or the Platform, including under the ESA;
- 1.32. "**Software**" means the entire software, owned by Kogena, consisting of various cooperating elements and components, that allows data collection, monitoring, analysis, and maintenance of the Monitored Devices, comprised of: (i) software connectors installed on dedicated End-Devices, allowing communication between Monitored Devices and "**CobotMonitor**" software (the "**Communicator**"), and (ii) the Platform;
- 1.33. "**Subscription Fee**" means the total fee payable to the Provider for the provision of the Services to Customer, including remuneration for granting the license to Software under the EULA and all end-to-end Services, Support, maintenance, and development fees, as well as all rental fees, excluding however fees for an Overtime Support, payable by the Customer to the Provider on a monthly basis;
- 1.34. "**Subscription**" means a Customer's prepaid entitlement to a specified use of the Software, including the number of Accesses, Accounts, type of Monitored Devices, and other particulars of the Agreement, representing the legal relationship between the Customer and the Provider, specifying the scope of the Services provided under the Agreement;
- 1.35. "**Support**" means support and maintenance services provided or to be provided by the Kogena or its nominee to the Customer in particular due to the occurrence of a Defect;
- 1.36. "**Term**" means the term of the Agreement, as specified in the Order; if no indication of Term appears in the Order, the Term shall be deemed to be indefinite;
- 1.37. "**Upgrades**" means new versions of, and updates to, the Software or any part thereof, whether for the purpose of fixing an error, bug, or other issue, or enhancing the functionality of the Software or any part thereof;
- 1.38. "**User**" means an individual person that accesses or uses any part of the Account or the Platform on behalf of the Customer and is entitled to a single Access; a User must be at least of a legal age;
- 1.39. "**User's Manual**" means a document specifying the conditions of use of the Platform, provided by the Provider.
- 1.40. "**Visitor**" means a person browsing the Content who is not a User, or not logged into the Account;
- 1.41. "**Website**" means the Kogena's website available at <https://kogena.com>, its subpages and subdomains and all content, services, and products provided by Kogena at or through the Website, which, among others, allows the access to the Platform;
- 1.42. "**Workspace**" a virtual environment inside the Platform, being a space of exclusive access of certain Accountholders or Users, containing of at least one Monitored Device, set of customizable parameters related to its monitoring, displaying the outcomes of Monitored Devices monitoring, gathered in the form of customizable screens, in a structure determined by a User.

2. General rules

- 2.1. These T&C set out the principles, scope, and conditions of use of the Services, the Software, and the Website, in particular the principles and technical conditions for the provision of Services by electronic means, placing the Orders, conclusion of Agreements and ESAs, and the complaint procedure.
- 2.2. The T&C apply to all Users and Customers.

- 2.3. The content of the T&C is continuously and freely available on the Platform, in a form that allows the acquisition, reproduction and consolidation of the T&C. The User and the Customer may review the T&C at any time.
- 2.4. Kogena is the owner and administrator of and the Website and the Software, notably the Platform along with the Communicator, as well as Kogena and CobotMonitor brands and trademarks. All copyrights to the Software and the Website (jointly the “**System**”), insofar as they do not include objects of intellectual property of third parties, belong entirely to Kogena and as such enjoy legal protection.
- 2.5. The detailed rules regarding the ownership of the Software, scope of its licensing and the extent of its permitted use are set out in the EULA which is hereby incorporated into this document by a reference.
- 2.6. Due to the constant development of the Services, Kogena reserves the right to change the functionality of the Software and the Services by introducing additional features, new services, subpages, subdomains or deleting existing ones, as well as changing the technical way of implementing the Services, without having to change the T&C, unless the scope of the changes will require to do so.
- 2.7. The Website is run in the Republic of Poland, through the website <https://kogena.com> and all its subpages and subdomains. The Platform is run in the Republic of Poland, through the website and <https://cobotmonitor.com>. Kogena is obliged to maintain the technical support of the System and to provide the Services with due diligence. Kogena strives to ensure the availability of the System 24 hours a day, 365 days a year, but reserves the right to apply technical and maintenance breaks in the operation of the System.
- 2.8. Browsing the Content and the conclusion of the ESA is voluntary and free of charge for each User. The conclusion of the Agreement however is limited, as it requires the creation of an Account by Kogena. The conclusion of the Agreement does also create obligations on the part of the Customer as specified in the relevant Order. The use of the Services is paid and subject to payment, in the form of a Subscription Fee.
- 2.9. The User and the Customer undertake to acknowledge the contents of the T&C. The use of the System implies expression of consent to these T&C. Each User and Customer is obliged to comply with the provisions of the T&C as of the start of the activities leading to the use of the System or Services, with special emphasis on the commencement of data transfer.
- 2.10. Full use of the Services and the System is subject to registration. Viewing the Content of the Platform does not require registration, however, the scope of Content visible to the Visitor differs from the scope of Content visible to the User, notably the use of the Software by a Visitor is excluded.
- 2.11. The technical requirements necessary to use the System are:
 - 2.11.1. an active electronic mail (email) account and a device connected to the Internet that meets the following minimum technical requirements:
 - 2.11.1.1. web browser capable of reading web pages written in HTML with Java Script support enabled;
 - 2.11.1.2. minimum screen resolution of 1024×768 pixels;
 - ~~2.11.2.~~ having infrastructure to connect a Connector, that meets the following minimum technical requirements:
 - 2.11.2.1. 230V electric power connection
 - 2.11.2.2. 4G cellular network access or internet connection
 - 2.11.2.3. local network connection to the robot/ machine
 - 2.11.2.4. mounting space for Connector of 25 cm x 25 cm x 10 cm.
- 2.12. The Provider shall not be liable for any actions or omissions of Users or Customers, in particular, for non-performance or undue performance of the obligations under a concluded Agreement or ESA, and for the consequences of violating the provisions of the T&C as well as for depriving Users or Customers of any rights by third parties in the situation of exclusive

fault of circumstances directly leading to such deprivation on the part of the User or the Customer.

- 2.13. The Customers and the Users are obliged to act personally, which means:
 - 2.13.1. in case of a Customer being an individual – acting on their own behalf;
 - 2.13.2. in case of a Customer not being an individual – by a person authorized to represent such User or a duly authorized proxy;
 - 2.13.3. in case of a User – acting on their own behalf.
- 2.14. The User and the Customer is obliged:
 - 2.14.1. not to provide or transmit Content that is prohibited by law or contrary to good morals, such as Content that promotes violence, is defamatory, slanderous, libelous, offensive, fraudulent, discriminatory, or abusive toward any individual or groups or violates the personal interests and other rights of third parties;
 - 2.14.2. to provide data and Content, including User-Generated Content that is truthful, complete, up-to-date, reliable, and not misleading;
 - 2.14.3. to use the System in a manner that does not disturb its operation, in particular by use of certain software or devices, e.g. which contains or installs any active malware or exploits, or uses our System for exploit delivery (such as part of a command-and-control system);
 - 2.14.4. not to attempt to disrupt or tamper with Kogena's servers in ways that could harm the System or any of its parts, to place undue burden on Kogena's servers through automated means, or to gain access to the Service in ways that exceed the authorization arising from the Agreement, the EULA or the ESA, impersonate any person or entity, including any of Kogena's employees or representatives, including through false association with Kogena, or by fraudulently misrepresenting identity or site's purpose; or
 - 2.14.5. not to undertake activities such as the distribution or publication of unsolicited commercial communication (spam) or any other use our servers for any form of excessive automated bulk activity;
 - 2.14.6. to use the System in a manner that is not disruptive or burdensome to other Users, Customers, Kogena or other Providers,
 - 2.14.7. to use the System in compliance with the provisions of law applicable in the Republic of Poland and any applicable jurisdiction, the provisions of these T&C, as well as with the general principles of Internet etiquette, in particular in a manner which does not infringe any proprietary right of any party, including patent, trademark, trade secret, copyright, right of publicity, or other rights.
- 2.15. The Customer and the User are responsible for making sure that their use of the Services and the System is in compliance with all applicable laws of any relevant jurisdictions they are subject to.
- 2.16. Downloading, copying, transmitting, distributing, or using in any extent the Content available Within the System, other than a User-Generated Content or Machine-Generated Content, requires the prior consent of Kogena and may not violate the provisions of the T&C, as well as may not violate the interests of Kogena and other Users or Customers. It is forbidden to aggregate and process the Content, other than a User-Generated Content or Machine-Generated Content, in any way in order to make it available to third parties on other websites as well as outside the Internet. It is also prohibited to use the trademarks or brands of Kogena or any third parties, including distinctive graphic elements, as part of external websites.
- 2.17. If the Customer's or User's bandwidth usage appears to be significantly excessive in relation to other Customers or Users, Kogena reserves the right to suspend such an Account or throttle its further bandwidth, transfer or data hosting until the bandwidth consumption is reduced to a more optimal or desirable threshold.

- 2.18. In the event of violation of the T&C by the User or the Customer Kogena may take action appropriate to the nature of the violation, including issuance of a warning to the User or the Customer (including the Customer related with such an infringing User), obliging the User or the Customer (including the Customer related with such an infringing User) to cease violations or remove their effects, temporary suspension or restriction of an Access to the Account (ban), removal of the User or termination of the ESA or Agreement with the Customer (including the Customer related with such an infringing User) preventing the User from re-registering (permanent ban).
- 2.19. In the event that Kogena receives official notification or credible knowledge of the unlawful nature of the Content or related activities, or their falsehood, Kogena shall be entitled to immediately prevent access to the Content. In such an event, Kogena shall not be liable to the User or Customer (including the Customer related with such an infringing User) for any damage caused as a result of preventing access to the Content if it has promptly notified the User or the Customer, as applicable, of the application of such a procedure. The obligation of immediate notification does not apply to data about which Kogena has become aware of their illegality on the basis of an official notification.
- 2.20. The Users and the Customers are forbidden to use the System to conduct activities competitive to Kogena, in particular by posting website addresses, content of an advertising nature or false information intended to discredit Kogena or the Services, save for the Distributors, however only with regard to reselling and distribution activities.
- 2.21. The Users and the Customers are obliged to immediately notify Kogena about known violations of the T&C and any unlawful actions, data, information, or actions taken via the System. Upon receipt of such notification, Kogena will take the actions provided by law, including immediately preventing access to the specified data, information, or actions.

3. Services and Accesses

- 3.1. Use of Services, and consequently the System is only allowed for registered Users, and the condition for such use is to obtain an Account.
- 3.2. Account creation is performed by Kogena and may not be conducted by User. The creation of an Account shall be the last stage of the Implementation process and takes place as a result of conclusion of the Agreement.
- 3.3. The Agreement shall be deemed as concluded upon confirmation of the Order by the Provider, in a form of a document, via e-mail or otherwise, as selected by the Customer.
- 3.4. The Provider sends the Customer the login data to the Platform in the number consistent with the number of Accounts set out in the Order, along with predefined passwords, which shall be changed following the first login.
- 3.5. The Customer may order a single Account, to which his Users would gain Access to, or determine in the Order, that each User shall have a separate Account (each Access shall be assigned to a separate Account).
- 3.6. A single Account may have one or multiple Accesses assigned, depending on the contents of an Order. The Customer shall remain the owner of a single Account and retain all administrative powers over it, as vested from time to time by the Provider including Monitored Devices as well as User-Generated Content and Machine-Generated Content. Each person vested with an Access shall be deemed a User.
- 3.7. In case multi-Account mode is selected, there must be at least one Account designed as an owner of a Workspace and it shall be assigned to the Customer. The foregoing does not prejudice the ownership of the Workspace by all Users. Each User shall be capable of customizing the structure of the Workspace to the extent allowed by the Provider in the Platform. The User of such an Account may be vested with administrative powers over all related Users, and the Workspace including Monitored Devices as well as User-Generated Content and Machine-Generated Content.

- 3.8. The Account allows the User, depending on the permissions granted to a specific User, to manage the monitoring range of Monitored Devices, to access, retrieve and visualize collected Machine-Generated Content, manage the User-Generated Content, to change password and to manage the ESA.
- 3.9. The condition of use of the Platform is the mandatory consent to the provisions of the T&C and acknowledgement of the Privacy Policy. Such consents are collected at the first login to the Platform by the User, and their expression shall be deemed as the conclusion of the ESA.
- 3.10. One User should have only one Access. One Account may serve multiple number of Users or may be exclusive to a single-User.
- 3.11. Any User acting on behalf of the Customer makes a declaration that they are duly authorized in fact or by law to represent the Customer or to act on its behalf and make declarations of intent on its behalf in the scope corresponding to the performed action.
- 3.12. The Customer discloses the personal data of all Users which shall be entitled to an Access. The Customer warrants and represents that it has all requisite consents for such disclosure, expressed by all concerned Users.
- 3.13. Kogena reserves the right to verify the User data given by the Customer, e.g. via email contact. Kogena is also entitled from time to time to send messages to the User of a technical, organizational, and legal nature, in particular in relation to the Services and actions taken by the User on the Platform.
- 3.14. In the event Kogena finds out that the statement of the User, referred to in paragraph 3.11 above, is inconsistent with the facts or that the User or the Customer violated the provisions of paragraph 3.10 above, Kogena may take any steps provided for by law or the T&C against this User or the Customer and refuse further provision of Services.
- 3.15. The provision of the Services is limited to the Term. Termination of the ESA on the initiative of the User occurs by removing the User's Account from the Platform and is possible by sending the appropriate request to Kogena at email address: support@kogena.com or by submitting the relevant instruction from within the Account settings (if Kogena has made this possibility available). Termination of the Agreement on the initiative of the Customer shall be subject to the conditions set out in the Order and the EULA.
- 3.16. Unless otherwise specified in the Order (e.g. multi-user Account) a User should refrain from sharing their login and password with third parties. Kogena is not responsible for the consequences of sharing the login and password with third parties by the User.
- 3.17. The User whose Account or Access has been suspended may not apply for a new Account or Access or use another Account or Access without the prior consent of Kogena.

4. Implementation

- 4.1. The Implementation shall be performed by the Provider with the assistance of the representative(s) of the Customer either on-site or remotely and in the timeframe as specified in the Order. The specific dates and times on the Implementation shall be agreed on confirmed between the Customer and the Provider via e-mail.
- 4.2. As part of the initial Implementation, the Provider shall perform all technical and organizational steps and employee training, allowing the Customer and authorised Users the full use of the Software, as well as provide or make available all relevant Documentation to the Customer. Further Implementations may also be provided on a Customer's request, or as necessary for the proper performance of the Services (assessed at the Provider's full discretion) on the terms as specified in the Order or separately agreed upon between the Customer and the Provider.
- 4.3. If specified in the Order, an Implementation Fee is payable to the Provider by the Customer for a successful Implementation. An Implementation Fee is always payable for any further

Implementations requested by the Customer and shall never be due for an Implementation undertaken on the Provider's sole initiative.

- 4.4. In case of an on-site Implementation, the Customer shall enable the Provider a free and undisturbed access to its premises, where all Monitored Devices are located, in the agreed dates and times.
- 4.5. In case of a remote Implementation, the Customer shall ensure the availability of its representatives named to supervise the Implementation as well as all Monitored Devices in the agreed dates and times. At least one of such representatives shall have sufficient technical qualifications or knowledge regarding IT systems and operations of the Monitored Devices.
- 4.6. As part of the Implementation the Connectors are linked and synced with the Platform and the Communicators. Depending on the contents of an Order, the Provider or the Customer shall be obliged to provide the Connectors in the number as specified in the Order.
- 4.7. Should the Customer or designated Users (i) fail to attend the Implementation process (ii) be unavailable at any time during the Implementation process, (iii) fail to ensure required access to the Customer's premises and/or Monitored Devices or (iv) fail to provide the required number of Connectors (if applicable) the Provider shall be exempt from the liability arising from the Customer's or Users' inability to use the Software correctly and shall not be obliged to redo the Implementation. Such a re-Implementation however may be performed for a separate Implementation Fee, as specified by the Provider.
- 4.8. During the Implementation, compatibility tests are run to ensure the Implementation was successful. Should the Customer or any User encounter any Defects afterwards, it shall promptly notify such fact to the Provider. If, after examining the Defect, any further Implementation turns out to be necessary, it shall be performed without undue delay and free of charge by the Provider.

5. Workspaces and Monitored Devices

- 5.1. A Workspace is created during Implementation on the conditions as determined in the Order. A single Workspace may be shared by multiple Users and may have multiple Accounts assigned.
- 5.2. Unless otherwise agreed upon with the Provider, each Monitored Device shall constitute a separate Workspace. A single Monitored Device monitored via Software may be shared (assigned to) by up to 5 (five) Users.
- 5.3. A home screen of an Account presents an overview of all Workspaces (Monitored Devices) such an Account or User is assigned to, with a map containing locations of Monitored Devices combined with each Workspace.
- 5.4. A Workspace contains various parts displayed as separate screens, comprised of different data tabs, which may be customizable to the extent allowed by the Provider in the Platform, under which a User may either view the Machine-Generated Content, including charts, logs and reports in a structure and timeframe determined by the User, manage the monitoring range of Monitored Devices, view data and information on them, monitor and compare Monitored Devices parameters, including but not limited to voltage, payload, current and temperature, working and idle time, current and past statuses, as well as various counters and KPIs.
- 5.5. The Workspace contains also alert section. Alerts appear in case any irregularity in Monitored Devices run or a Defect is detected. Alerts contain also recommended actions to be taken in order to eliminate the cause of an alert or the effect of alerted circumstance.
- 5.6. Detailed scope of Account and Platform functionality is specified in the Documentation, notably the User's manual, delivered or made available as part of the Implementation. All Users are obliged to familiarize themselves with its contents prior to first use of the Platform.

- 5.7. The Users may independently create or upload User-Generated Content while using the Services. The Customer is solely responsible for the content of, and for any harm resulting from, any User-Generated Content that any of the Users uploaded, created, or otherwise made available, regardless of the form of that Content.
- 5.8. The Monitored Devices may independently create, or upload Machine-Generated Content while being monitored under the Services. The Customer is solely responsible for the content of, and for any harm resulting from, any Machine-Generated Content that any of the Monitored Devices attributable to such Customer uploaded, created, or otherwise made available, regardless of the form of that Content.
- 5.9. Detailed rules of usage of the Machine-Generated Content as well as User-Generated Content by Kogena shall be governed by the EULA. Kogena may however use the Machine-Generated Content freely, in an anonymized form, in order to improve the quality of the Services, as well as to create and develop the Models, which then may be made available to Customers, Users or third-parties free of charge or for a fee, at the sole discretion of Kogena.
- 5.10. Kogena (and the Distributor, if applicable) considers the Contents stored in Workspaces, especially its customized structure, to be confidential to the Customer. Kogena (and the Distributor, if applicable) will protect the Contents of Workspaces from unauthorized use, access, or disclosure in the same manner that we would use to protect our own confidential information of a similar nature and in no event with less than a reasonable degree of care.
- 5.11. Kogena (and the Distributor, if applicable) and its representatives or employees may gain the access to the contents of Customer's Workspace (but only the Content stored in it, not the entire Workspace, including in the structure designed by a User), notably
 - 5.11.1. with Customer's consent and knowledge, for support reasons;
 - 5.11.2. when access is required for security reasons, including when access is required to maintain ongoing confidentiality, integrity, availability and resilience of the Software or Services;
 - 5.11.3. for technical, bug-fixing and improvement reasons;
 - 5.11.4. due to other important reasons, when the goals of such access may not be achieved otherwise,however in any case they shall treat any stored data as their own confidential information of the highest level of privacy and protect it from involuntary disclosure or dissemination at all times, with the utmost diligence. The foregoing shall apply however only to the User-Generated Data, as the Machine-Generated Data shall remain free to use, provided it is used in an anonymized form.

6. Licensing and reselling

- 6.1. The License for the Software shall be governed by the EULA.
- 6.2. The purpose of the Software shall remain for internal use only. As an exception from the EULA provisions, if expressly allowed in the Order, the Distributors shall be able to resell, redistribute, the Software, transfer or sublicense the License as they may think fit, however in any case within the scope of the License granted. No other User or Customer shall be allowed to resale or redistribute the Software, or the License and any such action shall be deemed a gross infringement of the Agreement allowing Kogena or other Provider to cease the Services and terminate the Agreement with an immediate effect.
- 6.3. The Distributor status is granted by Kogena at a Customer's request and provided that an express consent is given by Kogena, either during the conclusion of the Agreement (e.g. in the Order) or by a subsequent annex thereof, subject always to conclusion of the Distribution Agreement. The status indicator shall also be visible in the Account of such Distributor.

- 6.4. The Distributors shall be treated as the Service providers to their Customers and all claims or complaints, as long as they are not the sole responsibility of Kogena, shall be directed to the Distributor.
- 6.5. The provisions of the T&C regarding the Kogena's and Provider's obligations towards the Customers and the Users shall apply accordingly to the Distributors and the Distributors shall comply with them towards the Customers and the Clients unless certain actions are feasible only on Kogena's end.
- 6.6. The License shall be deemed to be amended and extended by virtue of these T&C toward any Customer having the status contemplated above by the following fields of operation: (i) the right to resell, redistribute, rent and lease the Software, (ii) the right to sublicense and transfer the License originally granted to a Customer and governed by the EULA – both at the terms at such Customer's discretion, but in line with the EULA and scope of the License granted under the EULA, save for the fields and rights contemplated herein as an one-off extension. Any User and Customer using the Software as a result of distributor's/reseller's action shall not have the right to further resell, redistribute, rent, and lease the Software, nor the right to further sublicense and transfer the License and shall be granted with a standard Customer/User status.
- 6.7. Detailed scope of the legal relation between Kogena, the Distributors and towards Users pertaining to them shall be governed by a separate Distribution Agreement.

7. Payments

- 7.1. The current pricing and payment terms are provided by the Provider on a specific request. The fees payable by the Customer are always determined in the Order.
- 7.2. The Subscription Fee shall be based on the number of Monitored Devices subject to monitoring under the Services, and the additional fees as specified in the Order, including but not limited to (i) the Implementation Fee, (ii) rental fees for the Connectors and (iii) maintenance fee.
- 7.3. Subscription Fee is payable in advance for the period as specified in the Order, based on an invoice issued by the Provider, with a 7-day payment deadline, via wire transfer to the bank account indicated on the invoice. Payment shall be considered made on the day the Provider's bank account is credited with the fee amount.
- 7.4. The interest in the rate of 5% per annum would be charged on late payments. Should the Customer delay with the payment of any Charge, Kogena is entitled to suspend its Account along with all Accounts and Accesses of related Users and to refrain from rendering the Services until the 14th day from the settlement of all due Charges, including accrued interest.
- 7.5. The Subscription Prices will remain the same for the entire duration of the period payment covered; however, Charges are subject to change starting from the new period.
- 7.6. Any subsequent change to the Subscription of a given Customer, e.g. adding new Monitored Devices shall be charged immediately prior or following such amendment. Kogena reserves the right to withhold the effectiveness of any such changes and make them dependent on the settlement of any accrued Charges.
- 7.7. The Customer may change the recurrence of payment prior to the beginning of a new payment period.
- 7.8. The Charges are non-refundable.
- 7.9. The Customer is responsible for all external fees, including taxes, associated with the use of the Services and the Software.
- 7.10. Invoices shall be drawn up, issued, and sent in electronic form, without signature of the issuing person.

8. Service level and maintenance

- 8.1. Any and all Upgrades of the Software developed by Kogena in a stable version shall be promptly implemented to the Software for the benefit of the Customer and the Users free of charge via OTA updates or enrolling new versions of web-based interfaces. The Customer or the User may not oppose any Upgrade.

9. Data protection

- 9.1. The controller of User's personal data is the Provider. The Provider reserves the right to deliver the personal data of Users to other entities for the purpose of performing the Agreement.
- 9.2. The Provider represents that Users' personal data are processed according to the applicable legislation, including in particular the 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) ("**GDPR**").
- 9.3. Specific terms of processing personal data and the scope of rights held by Users as well as the procedure of their exercise are specified in the Privacy Policy.

10. Liability

- 10.1. Kogena provides the System and the Services on an "as is" and "as available" basis, without warranty of any kind. Without limiting this, Kogena expressly disclaim all warranties, whether express, implied, or statutory, regarding the System or the Services including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy, and non-infringement.
- 10.2. Kogena does not warrant that the System or the Services will meet your requirements; that the System or the Services will be uninterrupted, timely, secure, or error-free; that the information provided through the System, or the Services is accurate, reliable, or correct; that any Defects or errors will be corrected; that the System or the Services will be available at any particular time or location; or that the System is free of viruses or other harmful components. You assume full responsibility and risk of loss resulting from your downloading and/or use of files, information, Content, or other material obtained from the System.
- 10.3. Kogena shall not be liable in respect of inappropriate use of the System or the Services by the Users or the Customers.
- 10.4. Kogena shall not be liable for any damage caused by incorrect use, inability to use or defective operation of the System or the Services by reason of Force Majeure, User's fault, or other reasons independent of Kogena.
- 10.5. Kogena shall not be liable in any way whatsoever for the provision of false or incorrect data by the Users or the Customers.
- 10.6. Kogena shall only be liable for non-performance or improper performance of the Agreement, the ESA or Services that is the consequence of Kogena's culpable and intentional conduct. Kogena's liability in each case is limited to actual damage (excluding lost profits) and to the amount of the Subscription Fee payable for the period of 12 months. On the contrary and for the avoidance of doubt, any liability arising from unintentional fault, including all forms of negligence, is hereby excluded.
- 10.7. Kogena is also not responsible for the Content posted on the Platform, the actions and omissions of Users and Customers, or for the improper performance or non-performance by Users and Customers of their obligations.
- 10.8. Users and Customers are liable to other Users and Kogena for their actions and omissions on the Platform, as well as for the actions and omissions of people for whom they are responsible.

- 10.9. Kogena is not responsible for technical malfunctions of the System and for interruptions in the availability of the System for reasons attributable to third parties (including telecommunications network operators) and caused by Force Majeure.
- 10.10. If a claim is made against Kogena by any third party, for which Kogena bears no responsibility, Kogena will forward all information about the claim to the entity that Kogena believes is responsible for the claim. That entity, insofar as it is bound by the T&C, agrees to immediately indemnify Kogena from any and all liabilities on this account and to take its place in the proceedings, failing which the responsible entity shall be liable to pay Kogena's damages on this account in full. Notwithstanding the foregoing, the Customers are obliged to assume liability in place of Kogena to the same extent for claims for which they remain liable under these T&C, including the act and omissions of the Users related to such Customers.
- 10.11. The detailed provisions on the liability regime regarding the License shall be governed by the EULA.
- 10.12. The Customers and the Users agree to release Kogena from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any disputes they may have with other Users and Customers or between them.
- 10.13. The Customers and the Users agree to indemnify Kogena, defend Kogena, and hold Kogena harmless from and against any and all claims, liabilities, and expenses, including attorneys' fees, which, according to these T&C or the Agreement, shall not be accountable to Kogena, including but not limited to any violation or infringement of the Agreement, the License of the ESA, provided that Kogena (1) promptly delivers written notice of the claim, demand, suit or proceeding; (2) gives the sole control of the defense and settlement of the claim, demand, suit or proceeding to a given User or Customer (provided that you may not settle any claim, demand, suit or proceeding unless the settlement unconditionally releases Kogena of all liability); and (3) provides all reasonable assistance, at a given User's or Customer's expense.

11. Complaints

- 11.1. The User and the Customer shall have the right to use the complaint procedure, under which they may report their objections concerning Services or the Software.
- 11.2. Complaints may be submitted electronically at support@kogena.com or in writing at Kogena's registration address with the annotation: *Complaint*.
- 11.3. The complaint should contain at least the name and surname, e-mail address and a description of the reported objections. If the data or information provided in the complaint need to be supplemented, before considering the complaint, Kogena shall request the complainant to supplement it in the specified range.
- 11.4. Kogena shall process the complaint within 30 days from the date of its receipt. Kogena's decision is final.
- 11.5. Response to the complaint shall be sent through the same channel as the complaint itself, unless the User reserved that the response should be sent in another form.
- 11.6. If the complaint includes claims for which Kogena is not responsible for, Kogena shall promptly forward the complaint to the proper entity.

12. Duration and termination

- 12.1. After the expiration of the Term, the Agreement shall be extended for another identical Term, unless the Customer or the Provider makes a statement on the unwillingness to continue the Agreement within 2 weeks before the expiration of the Term.
- 12.2. The Provider may terminate the Agreement with immediate effect in the event of:

- 12.2.1. serious breach of the Agreement, including the EULA, the Order, and these T&C, by the Customer or a User related to it;
 - 12.2.2. causing material damage to the Provider in the use of the Services, or the System, by the Customer or a User related to it provided that the Customer refuses to compensate the Customer for such damage or breaches its obligation to indemnify the Customer from any liability or debt in the manner specified in the T&C;
 - 12.2.3. delay in payment of any due Charges exceeding the period of 30 (thirty) days;
 - 12.2.4. suspension of Customer's business activities, commencement of liquidation, the existence of grounds for bankruptcy or filing a petition for bankruptcy or restructuring of the Customer.
- 12.3. The Customer may terminate the Agreement with immediate effect in the event of:
- 12.3.1. serious breach of the Agreement, including the EULA, the Order, and these T&C, by the Provider or its representative or employee;
 - 12.3.2. causing material damage to the Customer in the performance of the Services, by the Provider, provided that the Provider refuses to compensate the Customer for such damage or breaches its obligation to indemnify the Customer from any liability or debt in the manner specified in the T&C;
 - 12.3.3. actual cessation of performance of the Agreement or unjustified suspension of the Services to the Customer and failure to resume such services despite a request made by the Customer setting a deadline of at least seven days for cessation of the violations;
 - 12.3.4. suspension of Provider's business activities, commencement of liquidation, the existence of grounds for bankruptcy or filing a petition for bankruptcy or restructuring of the Provider.
- 12.4. If a Minimum Term is specified in the Order, the Agreement cannot be terminated or withdrawn from prior to the lapse of the Minimum Term.
- 12.5. The ESA may be terminated by either party (Kogena or the User), with Kogena only for material cause, similar to listed in paragraph 12.2. The right to terminate the ESA is enforceable at any time by way of lodging such a request with a relevant Distributor or sending it to support@kogena.com – regarding the Users. The Visitors may terminate the ESA by ceasing to use the Website and deleting Website's cookies. The termination of the ESA by the User shall not affect the obligations of the Customer under the Agreement, notably the payment of relevant Charges.
- 12.6. In the event the Agreement is terminated prior to the end of its Term, other than by mutual will of both Provider and the Customer, all Charges, including the Subscription Fees, shall be non-refundable.
- 12.7. All provisions of the Agreement, in particular these T&C, which by their nature should survive termination, will survive such a termination.
- 12.8. Kogena will retain and use User-Generated Content and all other data and information on the Customers and Clients, as narrowly as necessary to comply with legal obligations, resolve disputes, and enforce Kogena's rights. Kogena will delete the User-Generated Content within 1 month thereof and the remaining data, excluding Machine-Generated Content – within 2 years following cancellation or termination (though some information may remain in encrypted backups). Machine-Generated Content shall remain under Kogena's disposal, as Kogena will think fit, indefinitely.

13. Miscellaneous

- 13.1. For contractual purposes, the Customer and the Users agree to receive communications from Kogena in an electronic form via the email address submitted to Kogena; and agree that all communications that Kogena provides to them electronically satisfy any legal

requirement that those communications would satisfy if they were on paper (in writing), unless otherwise stated herein.

- 13.2. Kogena may assign or delegate these T&C, in whole or in part, including the License, to any person or entity at any time without Customer's consent. The Customer may not assign or delegate any rights or obligations under the T&C without prior written consent of Kogena, and any unauthorized assignment and delegation shall be void.
- 13.3. If any part of these T&C is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the original intent. The remaining portions will remain in full force and effect. Any failure on the part of Kogena to enforce any provision of these T&C will not be considered a waiver of our right to enforce such provision.
- 13.4. These T&C supersede any proposal or prior agreement oral or written, and any other communications between the Customer and the Provider relating to the subject matter of these T&C, save for the Order, which, in case of any discrepancies, shall prevail.

14. Final provisions

- 14.1. Kogena reserves the right to amend the T&C for important reasons, in particular in the event of changes to the functionality of the System or the rules of its operation, changes in the scope of the Services provided or the rules of their operation, changes to the rules of cooperation with Customers or changes relating for billing, pricing, and Charges. Any changes to the T&C ions are valid subject to their publication on the Platform with a fourteen-day transition period. The User and the Customer will be notified by e-mail about the change in the T&C.
- 14.2. The Customer and the User have the right to object to the amended provisions of the T&C. The objection may be submitted by e-mail to the following email address: support@kogena.com. Effective objection results in the termination of the Agreement or the ESA prior to the Term, and the removal of the objecting Users or all Users (is the objection is lodged by the Customer), which does not affect the obligations incurred before the amendment to the T&C. After 14 days from notification of the amendment to the T&C, it is presumed that the User and the Customer accepts the amended provisions.
- 14.3. In case the amendment is materially adverse to the Customer, the Charges already paid in advance shall be refunded for the unused period following the termination due to the objection to the amended T&C. If the amendment remains neutral or is adverse in the minor fields, the Charges remain non-refundable.
- 14.4. These T&C enter into force on April 1, 2021 and are valid until further notice. Kogena may at any time, for important reasons, cease to provide the Services or running the System or its any part, about which it will immediately notify Users and the Customers via e-mail and Visitors by displaying relevant information on the Platform's home page. In such an event the Charges already paid in advance shall be refunded for the unused period following the cessation of Service provision or the operations of the System.
- 14.5. The T&C are governed by the law of the Republic of Poland.