IXON INTERNATIONAL TERMS OF USE

Version: 4.1
Last updated: November 20th, 2023

1.   General

1.1   Words like **IXON**, **we, us,** or **our** in these Terms of Use, shall refer to:
- **IXON B.V.**, a Dutch corporation, if your company is located outside of the United States of America and Canada; IXON B.V. has a principal place of business at the Zuster Bloemstraat 20, 5835 DW, in Beugen, the Netherlands, and is registered with the Dutch Chamber of Commerce under file number 62729918.; or
- **IXON Inc.**, a Delaware corporation, if your company is located within the United States of America or Canada, IXON Inc.; IXON Inc. has a mailing address at 228 E. 45 Street, Suite 9E, New York, NY 100017, USA.

1.2   If your company is located outside of the United States of America and Canada, these Terms of Use are an agreement between you and IXON B.V. If your company is located within the United States of America or Canada, these Terms of Use are an agreement between you and IXON Inc.

1.3   We offer cloud-based services on our IXON Cloud platform for remote access to, as well as monitoring of, machines and systems connected to the internet via an edge gateway. Prerequisites for the use of our cloud-based services are:
- Registration of a company account on the IXON Cloud (https://portal.ixon.cloud) and the acceptance of these Terms of Use.
- A device with a modern web browser to access the IXON Cloud and establish VPN secured remote access to a machine or system with an edge gateway. Alternatively, a device installed with the IXagent can be used to establish such a connection and/or to enable a remote connection to your machines or systems with your own engineering software.
- Please check the information available on https://www.ixon.cloud for more detailed information and requirements, such as the device or system requirements to use the edge gateway, IXagent or IXON Cloud. Here you will also find what's included in the IXON Cloud and which extended services may be available for an additional fee. These extended services can include, for example, additional monitoring and evaluation functions for machines and machine data.

1.4   You, our customer and/or user of our cloud-based services, acknowledge and agree that **our products and services are solely tailored to, and should exclusively be used by, properly certified or properly licensed industry professionals**. Our products and services are not intended for consumer use.

1.5   These Terms of Use apply to all services offered by us, such as but not limited to the IXON Cloud, IXagent and VPN Client. Use of extended services as mentioned under 1.3 (third bullet) may be subject to additional or special Terms of Use. You have the option to view, print and save the Terms of Use in reproducible form during registration and each time you visit our website.

1.6   We are entitled to change these Terms of Use unilaterally, unless these changes alter the core of our business or of any agreement between parties. Changes that only refer to grammar, sentence structure, punctuation or factual information may be made by IXON without notification to you. In case of other, substantive, changes, we will notify you of the amendment in writing - which includes email and in-product notifications - at least 14 days before the effective date of the adjusted Terms of Use.

1.7   Unless we expressly agree to their validity in writing, your deviating, conflicting or supplementary general terms and conditions shall not become part of any agreement between you and IXON, even if we do not expressly object to their inclusion.

2. Agreement for use of the services

2.1 An agreement for the use of our IXON Cloud is concluded between you and IXON when you register an account on the IXON Cloud, or when you install any of our software. All agreements for the use of our IXON Cloud are subject to these Terms of Use.

2.2 By registering for the IXON Cloud or by installing our software, we grant you a non-exclusive, non-transferable right to access and use our software and services as made available to you by us, subject to your continuing compliance of these Terms of Use. Your right of use is limited to the use for professional business purposes only, and to the use of software and services we make available free of charge. The right to use additional services can be purchased via our website and may be subject to additional terms and conditions.

2.3 You must provide accurate and complete information for the purpose of setting up and maintaining your IXON Cloud account and keep this information up to date. Failure to do so may result in incorrect output of our services and/or suspension of your account for which we cannot be held responsible or liable. If we reasonably suspect that certain information is not correct or outdated, we will notify you and you will be granted a reasonable term to correct or update the account information.

2.4 Nothing in these Terms of Use shall be interpreted or construed so as to transfer any right, title, or interest in any intellectual property of one party to another, unless explicitly stated herein or otherwise agreed upon in writing between you and IXON.

2.5 We are entitled to wholly or partially have the services be rendered or performed by subcontractors. This applies in particular to data center operations.

3. IXON Cloud user access

3.1 Your IXON Cloud account is password protected and can be accessed with the login credentials (e.g. username and password) chosen by you or assigned to you. You shall adhere to best industry practices to prevent unauthorized use of your login credentials and data by third parties.

3.2 When a company account is opened, an initial user account is automatically created. This user account has all the administrative rights to manage the company account and the other user accounts associated with the company account.

3.3 For each company account, additional user accounts can be registered by the initial user within the IXON Cloud. If you are the (initial) user that manages a company account, then you are responsible for the other users you register with the company account, including: (i) managing the rights such users have, (ii) making sure that such users also comply with these Terms of Use, and (iii) making sure such users only use the service for its intended purpose as determined by IXON, which includes remote access and data logging for industrial machines for professional use. Besides such additional users themselves, the user managing the company account shall be liable towards IXON for the acts and omissions of the additional users.

4. No warranty; Indemnification; Use of the services

4.1 The IXON Cloud and other services of IXON are provided as is and IXON disclaims all warranties, whether express, implied, statutory, or otherwise. Certain functionalities may be free of charge, while other functionalities are subject to a fee as indicated on our website and/or the IXON Cloud.

4.2 You acknowledge and agree that the (level of) services we provide are among other things dependent on the information you provide us with, the information you process with our products and services, and the way you have installed and configured our products and services.

4.3 You ensure that your use of our products and services, and the use of any other persons using your company account, complies at all times with the requirements of these Terms of Use, the respective Services Special Terms for additionally booked services (if any) and the applicable laws. You shall

indemnify, hold harmless, and defend us from and against all damages incurred by us, resulting from third party claims because of the non-compliance with the aforementioned obligations. We are entitled to block, suspend or cancel access to our services in whole or in part at any time if there is a suspicion of use in violation of these Terms of Use or applicable law.

4.4 You may not:
   a. use our products and services for the distribution of malware or other malicious data that may cause damage to us or third-parties;
   b. circumvent any technical security measures of our products and services or the underlying computer systems;
   c. attempting to interfere or interfering in any way with our website, platform, services, or our networks or network security, or attempting to use our website or platform to gain unauthorized access to any other computer system;
   d. make inappropriate or disproportionate use of provided services, at the sole discretion of IXON;
   e. disassemble, reverse engineer, decompile or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of, or embodied in, our products and services (unless explicitly allowed by us or applicable law);
   f. use the services for any illegal or fraudulent activities, including but not limited to hacking, phishing, identity theft, and copyright infringement;
   g. send spam or engage in any other form of unsolicited communication or marketing;
   h. engage in any activity that may harm or disrupt our network, servers, or other users of our services;
   i. use the services to conduct any activity that may violate the laws of your country or region;
   j. harm us in any other way, at our sole discretion.

5. Installation and configuration

You are solely responsible for proper installation and configuration of our products and services, such as the IXON Cloud, in accordance with IXON's manuals and instructions as supplied by IXON or available on our sites (https://www.ixon.cloud, https://support.ixon.cloud, https://developer.ixon.cloud or other sites used by IXON). Any installation, configuration and use of our products and services require that you possess or acquire the necessary knowledge and system requirements at your own expense (e.g. adequate internet access; a personal computer; sufficient user rights on your personal computer; sufficient knowledge of your own industrial equipment).

6. Service availability

6.1 We do not guarantee a certain percentage of uptime, but we strive for a disturbance-free operation of our IXON Cloud platform and services and aim for an annual average availability of 99%. We do not guarantee constant and uninterrupted availability of our IXON Cloud or other services. Particularly for maintenance purposes, we reserve the right to shut down or restrict the availability of our IXON Cloud and other services in whole or in part for a certain time period. We will provide updates of any planned maintenance work that might affect the performance of our IXON Cloud services through https://status.ixon.cloud.

6.2 In case you become aware of functional failures and other malfunctions in our services, you should inform us hereof as soon as reasonably possible. You can do so by using the contact information available on our support website (https://support.ixon.cloud). If available, please share the following information:
   a. a description of the malfunction (attach screenshots if possible);
   b. the time when the malfunction occurred; and
   c. the effect of the malfunction.

6.3 Reported or noticed malfunctions will be handled by our support team on a commercially reasonable efforts basis during normal business hours in the Netherlands.

6.4   We might require you to provide an IXON support technician access to your company account. For this purpose, the holder of the company account must create a user account with the necessary user rights for support technicians from IXON for the desired duration of the support. Without setting up such a user account, it is not possible for IXON to provide certain support services.

7.   Remuneration

7.1   The remuneration for the provision of products and services, if any, shall be based on the prices agreed upon by mutual written consent. Once per calendar year, IXON is authorized to reasonably increase the applicable and agreed upon prices:
   a. if your company is located outside of the United States of America and Canada, in accordance with the Dutch Consumer Price Index; or
   b. if your company is located within the United States of America or Canada, in accordance with the percentage rate of increase equal to the change in CPI-W (Consumer Price Index, Urban Wage Earners and Clerical Workers, U.S. All Items) available at http://www.bls.gov/data/ (or its substantial equivalent if this index is not available).

Additionally, we are authorized to increase the prices of our products and services because of increases in costs of vendors, parts or raw materials that could not reasonably have been foreseen at the time of the order.

7.2   All prices are exclusive of, and you shall pay, all taxes, duties, levies or fees, or other similar charges imposed on IXON or yourself by any taxing authority (other than taxes imposed on IXON's income), related to your order, including, if applicable, value-added tax, sales or usage tax. In case of changes in law such that a tax is levied that is or becomes irrevocable with a consequent increase of IXON's costs for the delivering of the products and/or services, IXON is entitled to increase its prices accordingly and retroactively. IXON may demand immediate payment via credit card or bank transfer. IXON may send any invoices electronically, including through email.

7.3   The standard payment term for IXON's invoices is 30 days after the date stated thereon, unless otherwise agreed upon in writing. IXON shall be entitled to restrict, suspend, or block services partly or in full, if payments are not received when due.

8.   Termination

8.1   If you're using our services free of charge, and don't have an additional agreement with IXON, the use of our services may be terminated at any time by deleting your account. If, however, you have purchased additional services with a certain subscription period or for a certain term, then the agreement for such services may only be terminated by the parties at the end of such period or term, taking into account a notice period of 60 days. Parties' legal right to termination for good cause based on applicable law remains unaffected.

8.2   If the latter aforementioned agreement is not terminated in a timely manner, it will each time be tacitly renewed for a one-year period. Upon automatic extension, IXON has the right to uplift the price(s) by 5%.

8.3   Upon termination, your right to use our paid services expire. IXON will keep your company account including the associated user accounts and related data for at least three months. After these three months, IXON has the right to delete all related data irrevocably. Until this time, you can still access your account and export and download the recorded component data as an Excel or CSV file. If you wish to remove your account altogether, you can remove your account via our site.

8.4   IXON in its own discretion is entitled to stop offering or providing (certain) services or to amend configurations of any products and services. If you have subscribed and prepaid fees for canceled products or services, IXON will proportionally refund these fees, which will be the only remedy available to you in case of amendments or cancellation of products and/or services.

8.5   If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement, these terms or any other agreement between IXON and Customer, IXON may in its sole and absolute discretion suspend performance under the

Agreement with Customer and/or terminate the Agreement - in whole or part -, with immediate effect, without being liable for any damages to Customer.

8.6 Notwithstanding the above and without any obligation to return any prepaid sums, IXON may terminate its relationship with Customer at any time:
   a. (i) if Customer is in breach of the agreement or these terms;
   b. (ii) if Customer fails to pay any amounts due to IXON, under this agreement or other agreements with IXON;
   c. (iii) for a force majeure event that continues for more than thirty (30) days;
   d. (iv) if required due to change in laws/regulation by a regulator or authority with a lawful mandate;
   e. (v) if the bankruptcy of the Customer has been applied for or has been declared;
   f. (vi) if Customer is liquidated or discontinued;
   g. (vii) if Customer is in violation of any applicable laws or regulations.

8.7 Upon suspension and/or termination of the Agreement, all invoiced sums will become immediately due and payable.

8.8 Upon termination due to grounds i, ii, v, vi and vii, Customer is immediately due all sums that would have been due during the term of the Agreement.

8.9 IXON reserves the right to delete inactive user accounts, and all of its data, without further notice. An inactive account is an account that has not been signed in to within a 2-year period.

9. Liability and force majeure

9.1 In no event will IXON be liable under or in connection with this agreement under any legal or equitable theory, including breach of contract, tort - including negligence -, strict liability, and otherwise, for any: (a) consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages; (b) increased costs, diminution in value or lost business, production, revenues, or profits; (c) loss of goodwill or reputation; (d) use, inability to use, loss, interruption, delay, or recovery of any data, or breach of data or system security; or (e) cost of replacement goods or services, in each case regardless of whether IXON was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable.

9.2 Unless explicitly agreed upon otherwise in writing by IXON, our liability towards you for direct damages sustained by you on any ground whatsoever is limited per event - whereby a series of related events counts as one event - to the amounts you paid to IXON during the twelve months prior to the event that caused the damage, subject to a maximum of EUR 10,000.00 (ten thousand euros) if your company is located outside of the United States of America and Canada, or US$ 10,000.00 (ten thousand US dollars) if your company is located within the United States of America or Canada. We are not liable for direct damages resulting from data loss, if you failed to perform proper and frequent data backups.

9.3 In no event shall either party be liable to the other party, or be deemed to have breached these Terms of Use and any other agreement between you and IXON, for any failure or delay in performing its obligations - except for any obligations to make payments -, if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, including Covid19, related causes, such as governmental measurers or supply chain disruptions, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. Furthermore, we are not liable whatsoever if we are prevented from or delayed in performing our obligations by acts, events, omissions or accidents because of (i) the failure to properly fulfill obligations on the part of suppliers that were prescribed to us by you, (ii) defects in items, equipment, software or materials of third parties, (iii) power failures, (iv) internet, data network or telecommunication facilities failures, and/or (v) network attacks.

10.   Data & data protection

10.1   All data and information you provide to us or generated through the IXON Cloud will be owned by you. You grant IXON a non-exclusive, non-transferable license to use this data and information for enabling our service and for our internal use only, for example for improving our services. IXON has no other right or authority over the data.

10.2   You are solely responsible for the data and indemnify IXON from all damages resulting from the data. IXON can not be held responsible for any loss or damage from you or third parties, resulting from the data provided or generated by you.

10.3   If IXON believes that any of the data provided by you or generated by you through the IXON Cloud violates these Terms of Use, applicable law or could harm other users, third parties or IXON itself, IXON reserves the right to take down some or all of that data. IXON can not be held responsible for any resulting damages.

10.4   If you process the personal data of end users or other identifiable individuals in your use of a service, you are responsible for providing legally adequate privacy notices and obtaining necessary consents for the processing of such data. You represent to us that you have provided all necessary privacy notices and obtained all necessary consents. You are responsible for processing such data in accordance with applicable law.

10.5   We process personal data exclusively in accordance with the applicable data protection laws in the jurisdictions in which we operate.

10.6   We process the user data collected during the registration of the company account and the use of our services for the purpose of contract fulfillment, as well as for customer relation purposes. This data processing is based on our legitimate interests in improving our products and services, developing new products and services, and in order to be able to provide contact persons with information regarding our (new) products and services. You have the right to object at any time, on grounds relating to your particular situation, to the processing of your personal data which is carried out on the basis of legitimate interests. For further information on privacy, please refer to our most recent privacy statement, which can be found at https://www.ixon.cloud/privacy-and-cookie-policy.

10.7   The parties hereby conclude that the data processing agreement in Appendix I: Data Processing Agreement, forms an integral part to these Terms of Use. In this case you are the 'data controller' and responsible for the personal data you choose to process with our services. You indemnify and hold us harmless from and against claims of third parties whose personal data is processed by you as a data controller in any way that does not comply with applicable law. If your company is located in the European Union and insofar we process data as a 'processor', this data processing will also be governed by Article 28 GDPR.

11.   The Marketplace; Restrictions; No warranty; Liability

11.1   The IXON Marketplace consists of applications developed by IXON, applications developed by third parties, supported applications and unsupported Workshop applications. Workshop applications will be displayed as such in the Marketplace.

11.2   Customer accepts that:
   a.   Workshop applications will not be supported by IXON or any other entity whatsoever;
   b.   Customer uses the Workshop apps at its own discretion, and Customer assumes full responsibility associated with the use of Workshop applications;
   c.   IXON or the third party that supplied the application shall not be held responsible for any data loss or any damages that may arise from the use of, installation or inability to use the application, even if IXON has been informed about the potential for such damages.
   d.   When installing an application, Customer accepts the terms and limitations of the application, as set forth on the Marketplace, the description of the application or any other website or information source of IXON.

11.3   When using third party applications, you acknowledge and agree to the following:

a. When accessing or deploying third party applications from the Marketplace and utilizing third party developer services, you are using these at your own discretion;

b. It is your responsibility to carefully review the terms and conditions provided by the relevant third party, as these will govern your use of their application;

c. IXON makes no warranties regarding the accuracy, reliability, security, completeness, usefulness, non-infringement, or quality of any third party applications;

d. IXON does not own or control third party applications and/or developers. Under no circumstances will you hold IXON responsible for any actions, omissions, or content provided by the third party application.

e. You assume full responsibility associated with the use of third party applications;

f. IXON does not deliver support for third party applications. You should contact the third party in case of any questions.

g. Third party apps may not be used in such a way that they violate IXON's Terms of Use, the law or any other right.

11.4 To the fullest extent allowed by law, IXON provides the Marketplace and all applications "as is" and "as available," and hereby renounces all warranties, whether they are express, implied, or statutory. This includes but is not limited to any implied warranties of title, non-infringement, merchantability, or fitness for a specific purpose, in relation to the Marketplace or these terms. Users may possess other statutory rights, and in such cases, the duration of any statutory warranties will be restricted to the maximum extent permitted by law. IXON does not guarantee that:

a. all reported errors will be rectified;

b. the Marketplace will be uninterrupted, punctual, free from errors, fail-safe, fault-tolerant, or devoid of harmful components.

c. Some applications may only be accessible to you if you purchased a certain module from IXON. IXON, in its sole discretion, determines the requirements for the accessibility of all applications. IXON reserves the right to alter the accessibility, and alter or delete an application at any time. Customer is not entitled to any damages as a result thereof.

11.5 For clarity, to the fullest extent permitted under applicable law, all disclaimers of warranties and limitations of liability under the Terms of Use apply (mutatis mutandis) to the Marketplace and all applications available on or through the Marketplace.

12. Final provisions

12.1 If your company is located outside of the United States of America and Canada:

a. These Terms of Use and any agreement between you and IXON shall be governed by Dutch law.

b. The parties shall try to solve any dispute between them amicably. In case either party wishes to take a dispute to court, then such dispute shall exclusively be submitted to the competent Dutch court in the district where IXON has its registered office.

12.2 If your company is located in the United States of America or Canada:

a. These Terms of Use and any agreement between you and IXON shall be governed by the laws of the State of New York, USA.

b. The parties shall try to solve any dispute between them amicably. All disputes and controversies arising out of or relating to these Terms of Use and any agreement between you and IXON shall be finally and bindingly resolved under the Commercial Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration shall be New York, New York. The language of the arbitration shall be English. Any award, verdict or settlement issued under such arbitration may be entered by any party for order of enforcement by any court of competent jurisdiction.

12.3 ANY CAUSE OF ACTION AGAINST A PARTY, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

12.4   Should provisions of these Terms of Use be or become invalid in whole or in part, then this shall not affect the validity of the remaining provisions. The parties shall agree to new provisions that follow the purpose of the invalidated provisions as closely as possible.

12.5   Each party represents and warrants that (a) it has full power and authority to enter into these terms,, and (b) it will comply with all laws applicable to its provision, receipt, or use of the services, as applicable.

12.6   Changes to management or legal form of a party will not affect an agreement between the parties. We may transfer an agreement or any rights and obligations resulting from an agreement or these Terms of Use to a third party. All rights granted hereunder are personal to you and your company. Your rights and obligations may not be assigned to third parties without our prior written consent.

Appendix I

Data Processing Agreement

Version: September 27th, 2023

1. General

1.1 Words like **IXON**, **we, us,** or **our** in this Data Processing Agreement, shall refer to:

- **IXON B.V.**, a Dutch corporation, if your company is located outside of the United States of America and Canada; IXON B.V. has a principal place of business at the Zuster Bloemstraat 20, 5835 DW, in Beugen, the Netherlands, and is registered with the Dutch Chamber of Commerce under file number 62729918.; or
- **IXON Inc.**, a Delaware corporation, if your company is located within the United States of America or Canada, IXON Inc.; IXON Inc. has a mailing address at 228 E. 45 Street, Suite 9E, New York, NY 100017, USA.

1.2 If your company is located outside of the United States of America and Canada, this agreement is between you and IXON B.V. If your company is located within the United States of America or Canada, this agreement is between you and IXON Inc.

1.3 We offer cloud-based services on our IXON Cloud for remote access to, as well as monitoring of, machines and systems connected to the internet via an edge gateway. These services may also be provided on a white label basis. In any case accounts are needed to be able to login to and use our cloud-based services. For this purpose, certain personal data of our customer's employees, the personnel of our customer's clients, and/or third parties given access by you or your clients is processed by us.

1.4 Words like **you**, **your** and **customer** in this Data Processing Agreement shall refer to you or our customer who has executed an agreement with us for the provision of certain services. You acknowledge and agree that the resulting processing of personal data is subject to the General Data Data Protection Regulation (Regulation (EU) 2016/679, hereinafter: '**GDPR**'). This Data Processing Agreement applies insofar you can be qualified as a 'Data Controller' under the GDPR, and we can be qualified as a 'Data Processor' under the GDPR.

1.5 We are entitled to change this Data Processing Agreement with your consent. Consent to such a change shall be deemed to have been given if we notify you of the amendment in writing (which includes email) and you do not object to the amendment within four weeks of receiving the amendment notification. Parties agree not to amend this Data Processing Agreement in a way that detracts from the fundamental rights or freedoms of data subjects.

1.6 Unless we expressly agree to their validity in writing, your deviating, conflicting or supplementary terms or conditions shall not become part of any agreement between you and IXON, even if we do not expressly object to their inclusion.

1.7 Where, in this Data Processing Agreement, reference is made to terms that are defined in the GDPR, such as 'data controller', 'data processor' and 'personal data', such terms shall have the meanings given to them in the GDPR.

1.8 In the event of a contradiction between these terms and the provisions of related agreements between the Parties, existing at the time these terms are agreed or entered into thereafter, this Appendix, meaning only the terms of 'Appendix I: Data Processing Agreement' and expressly not of the Terms of Use, shall prevail.

1.9 [Appendix II: Technical and Organizational Measures](#) and [Appendix III: List of sub-processors](#) form an integral part of this Data Processing Agreement.

2. Description of processing

2.1   IXON undertakes to process personal data on behalf of you, the data controller, in accordance with the conditions laid down in this Data Processing Agreement, unless required to do so by Union or Member State law to which we are subject. The processing will be executed: (i) within the framework of the agreements between you and us, including our Terms of Use, and (ii) for all such purposes reasonably related thereto and as may be agreed to subsequently.

2.2   The personal data processed by us, and the categories of data subjects to whom the personal data relates, are specified below:
- Categories of data subjects:
  - Your (external) personnel who you instruct and allow to use our services.
  - Personnel and/or external personnel of your clients who you provide (white labeled, if applicable) services to.
  - Third parties who are given access to our services by your or your clients.
- Categories of personal data:
  - Device information (IP address, MAC address, browser data), name, email address, the date and time of visit and location.
- Duration of processing:
  - As long as needed to perform our obligations under any agreement between you and IXON.
  - At your choice, we will delete or return all the personal data to you after the end of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data.

2.3   We shall refrain from making use of the personal data for any other purpose than as agreed upon with you. You shall inform us of any processing purposes which are not clearly mentioned in this Data Processing Agreement or which are not a logical consequence of the agreed upon services. However, under our own responsibility, we are entitled to process personal data for analytical purposes and service improvement.

2.4   We shall not take any unilateral decisions about the processing of personal data for other purposes. The control over the personal data processed under this Data Processing Agreement rests with you as the data controller. All personal data processed on your behalf shall remain your property or the property of the relevant data subjects.

3. Obligations & Responsibilities

3.1   Regarding the processing of personal data mentioned in the previous article, we shall use all commercially reasonable efforts to ensure compliance with applicable laws and regulations governing the protection of personal data, such as the GDPR.

3.2   A list of technical and organizational measures we use to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons, can be found in Appendix II: Technical and Organizational Measures.

3.3   Our obligations arising from this Data Processing Agreement also apply to those processing personal data under our authority, including but not limited to our employees.

3.4   We will provide any reasonably necessary assistance if a data protection impact assessment, or a prior consultation with a supervisory authority, is necessary with respect to the processing of personal data.

3.5   As the processor of personal data, we are responsible for the processing that takes place within the scope of this Data Processing Agreement and your reasonable instructions. We are not responsible for other processing of personal data, including but not limited to, your collection of personal data and processing for purposes that are not mentioned in this Data Processing Agreement.

3.6 You represent and warrant that you have a valid legal basis to process, and have us process, the personal data. Furthermore, you represent and warrant that the content, the use and the instruction to process the personal data within the meaning of this Data Processing Agreement are not unlawful and do not infringe any rights of a third party. In this context, you indemnify us and hold us harmless from and against claims and actions of such third parties relating to the processing of personal data.

3.7 On request, you shall make a copy of these terms available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information you may redact part of the text of these terms prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

4. Transfer of personal data

4.1 You hereby grant us permission to process the personal data in countries within the European Economic Area. In addition, we may transfer the personal data to a country outside the European Economic Area provided that such country guarantees an adequate level of protection and/or all other obligations under this Data Processing Agreement and the GDPR are complied with.

4.2 At your request, we shall inform you about the countries in which the personal data is processed. You are always entitled to object to any processing of personal data outside of the European Economic Area. We shall take such objections seriously and will try to find a reasonable solution. If we cannot come to a solution that is acceptable for both parties, and the continued transfer of personal data is in breach of any privacy legislation applicable to you as a controller, then you are entitled to terminate your agreements with us.

5. Third parties and subcontractors

5.1 You hereby grant us general permission to engage third parties (sub-processors) within the scope of the services we provide to you. At your request, we shall inform you about the engaged sub-processors and/or any plans to engage new sub-processors. A list of used sub-processors can be found in Appendix III.

5.2 In any case, we shall proactively inform you of any intended changes concerning the engagement of new sub-processors. When we have informed you about such a change in sub-processors, you shall have one month to object in writing to our communicated intentions. If you object to our intention to engage a new sub-processor, then the parties agree to engage in good faith discussions to resolve the matter. If the parties do not reach an agreement on our intention to engage the sub-processor, then we may engage the relevant new sub-processor and you will be entitled to terminate your agreement with us by the date on which the new sub-processor is engaged. If you do not object to our communicated intentions within the four-week term, then you shall be deemed to have no objections to the change in sub-processors.

5.3 When engaging sub-processors, we shall ensure that such sub-processors will be obliged to agree in writing to duties which are substantially the same as agreed in this Data Processing Agreement.

5.4 We shall remain fully responsible to you for the performance of the sub-processor's obligations under its contract with us. We shall notify you of any failure by the sub-processor to fulfill its obligations under that contract.

6. Security

6.1 Parties shall implement appropriate technical and organizational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to that data (hereinafter 'data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. We shall implement the technical and organizational measures specified in Appendix II to ensure the security of the personal data.

6.2 We shall grant access to the personal data to members of our personnel only to the extent strictly necessary for the implementation, managing and monitoring of our services. We shall ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

6.3 We shall periodically review and update our technical and organizational security measures to make sure that these measures remain at an appropriate level considering changes (if any) in the state of technology and the nature of the personal data. We do not warrant that the security measures are effective under all circumstances. At your request, we shall provide you with our latest information regarding our implemented security measures.

7. Data breaches

7.1 In the event of a personal data breach concerning personal data processed by us under these terms, we shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects. We will notify you of the breach without undue delay but at least within forty-eight (48) hours upon its discovery. You, as the controller of the personal data, shall solely decide whether or not to notify the data subjects and/or the relevant supervisory authorities about the data breach.

7.2 If required by applicable laws and/or regulations, we shall provide all reasonable cooperation in notifying the relevant authorities and/or data subjects. However, you remain the responsible party for any statutory notification obligations in respect thereof.

7.3 In case of a data breach, we shall provide you with the information necessary for you to comply with your legal notification obligations towards data subjects and/or authorities. The notification obligation includes in any event the duty to report the fact that a breach has occurred, including details regarding:
- the (suspected) cause of the breach;
- the contact point where more information can be obtained;
- the approximate number of data subjects and number of personal data records concerned;
- the (currently known and/or anticipated) consequences thereof;
- the (proposed) solution;
- the measures that have already been taken.

8. Requests from data subjects

8.1 We shall promptly notify you of any request we have received from a data subject. You shall then be responsible for properly handling the request. We may notify the data subjects of the fact that their requests have been forwarded and will be handled by you.

8.2 When necessary, we shall assist you in fulfilling your obligations to respond to data subjects' requests to exercise their rights, taking into account the nature of the processing.

9. Non-disclosure and confidentiality

9.1 All personal data received by us from you within the framework of this Data Processing Agreement is subject to a duty of confidentiality. With regards to sub-processors engaged within the scope of this Data Processing Agreement or other providers of professional services, exchanging the confidential personal data is only allowed if such sub-processor or third party is also legally bound to a similar obligation of confidentiality.

9.2 This duty of confidentiality will not apply if you (i) have expressly authorized the provision of such information to third parties, (ii) where the provision of the information to third parties is reasonably necessary taking into account the nature of the instructions and the implementation of this Data Processing Agreement, or (iii) if there is a statutory obligation to provide the information to a third party.

10. Audit

10.1 In order to confirm compliance with all points in this Data Processing Agreement, and article 28 of the GDPR when applicable, you shall be entitled to have audits carried out. You may choose to conduct the audit by yourself or mandate an independent auditor who is bound to confidentiality. The costs of the audit will be borne by you.

10.2 The audit will only take place after you have requested and assessed similar audit reports made available by us and provide reasonable arguments to conduct an audit. Such an audit is justified when the audit reports provided by us give no or insufficient information regarding our compliance with this Data Processing Agreement. The audit initiated by you will take place no more than once a year and only after you have provided two weeks prior notification.

10.3 We will cooperate with the audit and will make available any reasonably necessary information, including supporting information such as system logs and employees as timely as possible.

10.4 The findings in respect of the performed audit will be discussed and evaluated by the Parties and, where applicable, implemented by us.

11. Duration and termination

11.1 This Data Processing Agreement is entered for the duration set out in the agreement between you and us. If no clear term has been agreed upon, then this Data Processing Agreement will apply as long as we process personal data on your behalf. If we no longer process personal data on your behalf, then this Data Processing Agreement is automatically terminated.

11.2 This Data Processing Agreement cannot be terminated unilaterally by either Party if such termination would lead to non-compliance with applicable privacy legislation.

11.3 Upon termination of the Data Processing Agreement, the Parties shall discuss and agree if any personal data still in our systems should be deleted or returned to you.

11.4 Parties shall provide their full cooperation in amending this Data Processing Agreement insofar necessary because of any amended privacy laws and regulations.

12. Miscellaneous

12.1 This Data Processing Agreement forms an integral part of the agreement between you and us. All rights and obligations under our Terms of Use, including the limitations on liability and applicable law, apply mutatis mutandis to this Data Processing Agreement.

12.2 In case of a dispute between a data subject and one of the parties as regards to compliance with these terms, that party shall use its best efforts to resolve the issue amicably in a timely fashion.

The parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

12.3   These terms shall be governed by Dutch law. The parties shall try to solve any dispute between them amicably. In case either party wishes to take a dispute to court, then such dispute shall exclusively to the competent court in the district of Oost-Brabant location 's-Hertogenbosch.

Appendix II

Technical and Organizational Measures

Hereunder you will find a description of the technical and organizational measures implemented by us (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

Infrastructure security

Server Network
The IXON Cloud is a complex network of over 150 servers, distributed globally among various hosting providers. All are situated in data centers maintaining the highest security standards.

High Availability
Most IXON servers are set up for high availability or have redundant deployments, ensuring that a single hardware or network failure won't compromise the IXON Cloud's availability.

Backups
Stateful servers are backed up weekly. Additionally, backups for essential customer and machine data are created every four hours. These backups are monitored in real-time for accuracy and undergo monthly validity tests.

Server Access
Only senior IXON personnel, including developers and administrators, can access servers. This is facilitated through unique usernames and private SSH keys. All server-related activities are logged and audited.

Real-time Monitoring
Servers are constantly monitored using an array of both standard and custom checks analyzing internal metrics. Any deviations or anomalies immediately alert relevant staff.

Server Configuration
A master node manages server configuration, guaranteeing uniformity across servers. This system also enables effortless deployment of new servers.

Server Hardening
Our servers undergo a hardening process, minimizing vulnerabilities by eliminating unused protocols, tightening file access permissions, and mandating robust passwords.

Patch Management
Critical patches are applied within a day. Weekly, non-critical software patches are assessed and those enhancing uptime, performance, or security are deployed.

Firewalls
Each server boasts a firewall, adopting a deny-all, permit-by-exception approach. Exceptions are rigorously evaluated to be as strict as possible, employing methods like source IP or protocol whitelisting.

Inter-server Exchange
IXON Cloud servers operate within an internal mesh network, ensuring that communications between servers never traverse the public Internet.

Data Privacy and confidentiality

Privacy by Design
Every change in data handling, from software updates to subcontractor shifts or internal process modifications, undergoes a privacy impact analysis to ensure data privacy.

GDPR Compliance
Personally identifiable information (PII) is processed and stored by EU-based third parties in line with GDPR legislation, as detailed in Part V. IXON has designated a privacy officer to ensure compliance.

Data Ownership
All personal and machine data stored or created in the IXON Cloud belongs to the user. IXON may not, in any shape or form, misuse, distribute or sell this information.

Data Retention
Data does not expire as long as you have an active user account. After deleting your account, data may be deleted after three months.

TLS Encryption
HTTPS and MQTT connections use TLS 1.2 or higher for encryption. We permit only "strong" encryption algorithms that support perfect forward secrecy, utilizing RSA keys of 4096 bytes.

VPN Encryption
VPN connections utilize single-use VPN certificates and are encrypted using AES-256-CBC with SHA512.

Password Hashing
IXON Cloud passwords are stored as hashes using Argon2id, configured with 3 iterations, 4 degrees of parallelism, 64 MiB memory, and a 16-byte salt.

Vulnerability management

Vulnerability scanning
IXON Cloud servers are tested for vulnerabilities every week using both internal and external scans.

Penetration Testing
Each year, the IXON Cloud and IXrouter undergo 2 to 3 third-party penetration tests. Tests range from black box evaluations of the entire IXON Cloud to white box analyses of significant architectural changes.

Log analysis
All server logs are gathered in a centralized log system and automatically analyzed according to community-maintained and custom security rules..

Incident handling

Security Breach Protocol
A protocol is in place to address security incidents effectively and efficiently. This protocol involves the following steps: 1) Incident verification, 2) Containment, 3) Evaluation, and 4) Lessons learned.

Incident Notification
Impacted parties and users are notified promptly about a security incident via email. We strive to be as transparent as possible in our communication.

Incident Training
Annually, using a tabletop setting or a simulated environment, we replicate a major security breach to ensure IXON personnel are familiar with their role in the security breach protocol.

Business Continuity Plan
A plan is in place to ensure business operations continue smoothly during various man-made or natural events.

Application Security

Authentication
The initial login to the IXON Cloud uses Basic Authentication. After successful login, users receive a Bearer token valid for their session duration.

Password strength
We don't enforce traditional complexity requirements for passwords. Instead, we mandate passwords be deemed "unguessable" (no. guesses > 10^8) by our strength estimator. This system also blocks commonly used passwords.

Brute force protection
Repeated failed login attempts (>10 tries) result in a temporary block. This time increases with subsequent failed attempts, up to a maximum of 1 hour.

Multi-factor authentication
Time-based one-time passwords (TOTPs) can be employed as an additional authentication factor. They can be activated for individual users or mandated for all users within your IXON Cloud environment.

Granular permission
Administrators can fine-tune permissions using user groups and roles, adjusting access for multiple users simultaneously. These permissions can provide access to all devices, target specific ones, or restrict certain device services, such as VNC, VPN, or HTTPS.

Logical separation of data
Although customer data resides in multi-tenant environments, we implement multiple layers to safeguard data confidentiality. Initially, requests validate your Bearer Token. Subsequently, data filtering occurs based on your domain, company ID, and permission role – returning only the information you're authorized to view.

Session control
Active IXON Cloud sessions are accessible within your account details. Implementing a security change, like updating your password, auto-revokes all ongoing sessions.

Audit trails
The IXON Cloud provides device-specific and company-wide audit trails, offering users a comprehensive record of historical events.

Software development

Security by design

Security requirements are created prior to development which must be met before changes may be deployed.

Peer reviews
Any code modifications undergo a review by at least one senior, independent developer. This ensures readability, clarity, and completeness. All identified issues must be resolved before approval.

Automated testing
Upon committing changes to our software versioning system, the code undergoes comprehensive automated tests. This encompasses unit tests, scenario tests, and security evaluations.

Staged deployment
We employ distinct environments to segregate (potentially) insecure code before it reaches production:
- Development: Runs locally on developers' systems, facilitating code modifications.
- Testing: Houses finished features and serves as a platform for manual tests.
- Staging: Contains code ready for production, and is utilized for integration and stress testing.

Organizational security

Vendor reviews
Suppliers and third parties undergo an initial security review and subsequent annual checks. Essential suppliers, like hosting providers, are mandated to possess an ISO27001 certificate or equivalent.

Training and awareness
All security personnel must meet a set training quota each quarter. New hires are trained on IXON's security policies during onboarding, and the entire staff regularly undergoes updates on pertinent security subjects.

Policy management
Our security policies are accessible via an internal webpage. Policy alterations are documented, requiring approval before being published. Policies undergo a biannual review.

Risk management
Quarterly risk assessments categorize threats by likelihood and impact. Risks exceeding acceptable thresholds are documented in a treatment plan, outlining specific corrective actions and their respective deadlines.

Endpoint protection
All company hardware features hard-disk encryption and endpoint protection software. In-depth antivirus scans run weekly, with any anomalies instantly reported to our security team.

Certification
IXON's management system holds certifications in:
- ISO9001 - Quality management
- ISO27001 - Information security management
- ISO27017 - Cloud System Information Security
- ISO27701 - Privacy management

Accredited third-party NCI conducts yearly external audits.

Internal audits

Every quarter, internal audits are undertaken by independent IXON employees.

Appendix III

List of sub-processors

Company	Database location	Type of data stored	Website
👤 Digital Ocean LLC	The Netherlands	Audit trail data	digitalocean.com
		Customer data	
		Machine data (Backup)	
👤 UpCloud Ltd.	The Netherlands	Audit trail data	upcloud.com
👤 ElasticCloud	Centralized logging	The Netherlands	elastic.co/cloud
👤 Mailchimp	Email services	United States	mailchimp.com
👤 TransIP	Customer data backup	The Netherlands	www.transip.eu
👤 Hubspot	Corporate website (www.ixon.cloud) and integration with CRM	Germany	hubspot.com
👤 Salesforce.com Inc.	CRM	France and Germany	salesforce.com