

Terms of Use

IXON B.V.

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1. General

- 1.1 **IXON B.V.** is a Dutch company with its principal place of business at the Zuster Bloemstraat 20, 5835 DW, in Beugen, the Netherlands, and registered with the Dutch Chamber of Commerce under file number 62729918. Words like **IXON**, **we** or **our** in these Terms of Use, shall refer to IXON B.V. as the case may be.
- 1.2 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 IXrouter. 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 IXrouter. Alternatively, a device installed with the IXagent can be used to establish such 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 IXrouter, 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.
- 1.3 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, industry professionals**. Our products and services are not for consumer use.
- 1.4 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 1.2 (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.
- 1.5 We are entitled to change our Terms of Use 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.
- 1.6 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 and accept these Terms of Use. An agreement is also concluded between you and IXON, when you install any of our software, in which case these Terms of Use are also applicable.
- 2.2 By registering for the IXON Cloud or by installing our software, we grant you a non-exclusive, non-transferable right to use our software and services 'as is' made available to you. This right is limited to the use for professional business purposes and to the use of software and services we intended to make available free of charge. The right to use additional services can be purchased via our website.
- 2.3 You warrant that the information you provide us with, like an email address or company name, is correct and complete. Furthermore, you shall update your information or inform us without delay in case such information is no longer up to date.
- 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. You grant us a license to use the information you provide us, including the information you process using our services and/or software, for the purposes of complying with our agreement(s) and to analyze and improve our products and services.
- 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 Our IXON Cloud is password protected and can be accessed with the login credentials (e.g. username and password) chosen by you or assigned to you. You are obliged to treat your login credentials with strict confidentiality and to change the password at regular intervals. You shall adhere to best industry practices in order 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 also 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.

For each company account, additional user accounts can be registered within the IXON Cloud. If you are the user that manages a company account, then you are responsible for the other users you associate 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. 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. Use of the services

- 4.1 The IXON Cloud and other services of IXON are provided as is. 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 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 If your company account transfers more than 10 GB of data through the IXON Cloud per calendar month, we reserve the right to reduce the data transfer speed (data throttling) for your company account and the associated user accounts.
- 4.4 You ensure that your use of our products and services complies at all times with the requirements of these Terms of Use, the respective Special Terms of Use for additionally booked services (if any) and the applicable laws. You indemnify and hold us harmless from and against all damages resulting from your non-compliance with the aforementioned obligation. We are entitled to block 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.
- 4.5 Notwithstanding the aforementioned, 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) make inappropriate or disproportionate use of provided services by disregarding the service information and/or specifications on bandwidth usage as available on our website; and/or
 - (d) 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).

5. Installation and configuration

Our products and services, such as the IXON Cloud, must be installed and/or configured autonomously by you. 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 strive for a disturbance-free operation of our IXON Cloud platform and aim for an annual average availability of 99%. There is no claim to 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.
- 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. If available, please share the following information:
- a description of the malfunction (attach screenshots if possible);
 - the time when the malfunction occurred; and
 - the effect of the malfunction.
- 6.3 Reported or noticed malfunctions will be handled by our support team on a best effort basis within normal business hours in The Netherlands.

- 6.4 In certain support cases the holder of the company account must set up access for an IXON support technician. For this purpose, the holder of the company account may 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.

7. Remuneration

- 7.1 The remuneration for the provision of chargeable products and services shall be based on the prices agreed upon conclusion of the respective agreement. Once per calendar year, IXON is authorized to reasonably adjust the applicable and agreed upon prices for inflation based on the Dutch Consumer Price Index.
- 7.2 All price quotations are net prices and do not include the value added tax valid at the time of invoicing. 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 thirty days after the date stated thereon, unless otherwise agreed upon. IXON shall be entitled to restrict or block services if the user does not settle invoices within the applicable payment term.

8. Termination

- 8.1 The agreement for the use of our services may be terminated in writing by either party at any time with a notice period of 30 days. 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 30 days. Parties' legal right to termination for good cause based on applicable law remains unaffected.
- 8.2 Upon termination, your right to use our services expires. Three months after termination, your company account including the associated user accounts will be deleted. Until this time, you're entitled to export the recorded component data as an Excel or CSV file.
- 8.3 IXON in its own discretion is entitled to stop offering or providing (certain) services. In such case IXON will refund prorated any prepaid fees (if any) for the services that will no longer be provided.

9. Liability and force majeure

- 9.1 Our liability for damages is not limited in case such damages are caused by us intentionally or if such damages are the result of our gross negligence. Furthermore, our liability is not limited insofar our liability cannot be limited or excluded by applicable law.
- 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,- (ten thousand euros). Our liability for any indirect or consequential damages, such as loss of revenue or missed savings, is excluded. Furthermore, we are not liable for data loss if the damage is based on your failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.

- 9.3 We are not liable whatsoever if we are prevented from or delayed in performing our obligations by acts, events, omissions or accidents beyond our reasonable control, i.e. by force majeure. This includes, but is not limited to: (i) force majeure on the part of suppliers of IXON, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to us by you, (iii) defects in items, equipment, software or materials of third parties, (iv) government measures, (v) power failures, (vi) internet, data network or telecommunication facilities failures, (vii) network attacks, (viii) pandemics, and (ix) war.

10. Data protection

- 10.1 We process personal data exclusively in accordance with the applicable data protection law.
- 10.2 We process the user data collected during the registration of the company account and the use of our services for the purpose of contract fulfilment, 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 privacy statement.
- 10.3 Insofar we process data as a 'processor', the data processing will be governed by Article 28 GDPR and the parties shall conclude a data processing agreement (see Appendix 1: Data Processing Agreement). 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.

11. Final provisions

- 11.1 These Terms of Use and any agreement between you and IXON shall be governed by Dutch law.
- 11.2 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.
- 11.3 Should individual 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. In place of the invalid provision, the parties undertake to agree on the provision that comes closest to the purpose of the invalid provision while remaining valid.
- 11.4 Changes to management or legal form 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.

Appendix 1

Data Processing Agreement

1. General

- 1.1 **IXON B.V.** is a Dutch company with its principal place of business at the Zuster Bloemstraat 20, 5835 DW, in Beugen, the Netherlands, and registered with the Dutch Chamber of Commerce under file number 62729918. Words like **IXON**, **we** or **our** in this Data Processing Agreement, shall refer to IXON B.V. as the case may be.
- 1.2 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 IXrouter. 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 and/or the personnel of our customer's clients is processed by us.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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.

2. Processing objectives

- 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. 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 client who you provide (white labelled, if applicable) services to.

- Categories of personal data:
 - IP address, name, email address, the date and time of your visit and your location.

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. Processor's obligations

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 At your request, we shall inform you about the specific measures we have adopted to comply with our obligations under this Data Processing Agreement.

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.

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 objection 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. Responsibilities

- 5.1 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.
- 5.2 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.

6. Third parties and subcontractors

- 6.1 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.
- 6.2 In any case, we shall pro-actively inform you of any intended changes concerning the engagement of new sub-processors. When we have informed you about such 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.
- 6.3 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.
- 6.4 We shall remain responsible towards you for the performance of the sub-processor's obligations in accordance with the GDPR.

7. Security

- 7.1 We shall take appropriate technical and organizational security measures to protect the personal data against any form of unlawful processing (such as unauthorized disclosure) in connection with this Data Processing Agreement. These measures should provide a suitable level of protection, considering the state of technology, the costs of implementation and the nature of the personal data.
- 7.2 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.

- 7.3 With regards to security you also have a responsibility to take appropriate measures against unlawful processing of personal data, for example to make sure that login credentials remain confidential.

8. Data breaches

- 8.1 In the event of a personal data breach, within the meaning of the GDPR, we will notify you thereof 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.
- 8.2 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.
- 8.3 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:
- o the (suspected) cause of the breach;
 - o the contact point where more information can be obtained;
 - o the approximate number of data subjects and number of personal data records concerned;
 - o the (currently known and/or anticipated) consequences thereof;
 - o the (proposed) solution;
 - o the measures that have already been taken.

9. Requests from data subjects

- 9.1 We will notify you if a data subject submits a request with us to exercise his/her rights under applicable privacy laws and regulations, insofar it relates to personal data we process on your behalf within the scope of this Data Processing Agreement. 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. Where necessary, we shall reasonably assist you in complying with the data subject's request.

10. Non-disclosure and confidentiality

- 10.1 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.
- 10.2 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.

11. Audit

- 11.1 In order to confirm compliance with all points in this Data Processing Agreement, you shall be entitled to have audits carried out by an independent third party who is bound to confidentiality. The costs of the audit will be borne by you.
- 11.2 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.
- 11.3 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.
- 11.4 The findings in respect of the performed audit will be discussed and evaluated by the Parties and, where applicable, implemented by us.

12. Duration and termination

- 12.1 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.
- 12.2 This Data Processing Agreement cannot be terminated unilaterally by either Party if such termination would lead to non-compliance with applicable privacy legislation.
- 12.3 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.
- 12.4 Parties shall provide their full cooperation in amending this Data Processing Agreement insofar necessary because of any amended privacy laws and regulations.

13. Miscellaneous

- 13.1 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.