

Waylay AWS Terms Of Use

INTRODUCTION

Date of Last Revision: April 07, 2023

THESE TERMS OF USE, TOGETHER WITH THE SPECIAL TERMS (IF ANY), REPRESENT THE AGREEMENT ("AGREEMENT") BETWEEN YOU (BOTH THE INDIVIDUAL USING THE SERVICES OR VISITING THE WEBSITE AND ANY OTHER PERSON OR ENTITY ON BEHALF OF WHICH SUCH INDIVIDUAL IS ACTING) AND WAYLAY NV, WITH REGISTERED OFFICE AT BLEKERSDIJK 33A, 9000 GENT, REGISTERED WITH THE CROSSROADS BANK OF ENTERPRISES ('KBO') UNDER COMPANY NUMBER 0544.746.258 (RPR GENT, DISTRICT GENT) ("Waylay", "WE", "US", "OUR") PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SERVICES OFFERED BY WAYLAY. BY VISITING THE WEBSITE OR USING THE SERVICES IN ANY MANNER, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY AND A PARTY TO THE THIS AGREEMENT. IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL THE TERMS OF THIS AGREEMENT, YOU HAVE NO RIGHT TO USE THE WEBSITE OR SERVICES. IN CASE OF CONTRADICTION OR DISCREPANCIES, THE SPECIAL TERMS SHALL PREVAIL OVER THESE TERMS OF USE. YOUR GENERAL TERMS AND CONDITIONS (IF ANY) SHALL NOT APPLY (EVEN IF WAYLAY HAS NOT EXPLICITLY OBJECTED TO THEIR APPLICABILITY).

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I. DEFINITIONS

Account: the primary means for accessing and using the Waylay Services, subject to payment of a Fee;

Authorization: the set of rights and privileges within the Waylay Services assigned to a User by Waylay on behalf of a Customer;

Customer: a natural or legal person who has accepted the terms of this Agreement with Waylay;

Customer Data: Any digital data and information (including without limitation information relating to your end user customer belonging to a third party Organization), which is submitted to the Waylay Services or otherwise inserted to the System by the Customer. Customer Data may or may not include Personal Data.

Guidelines: additional guidelines or rules applicable to specific features, applications, products, or services which may be posted from time to time on the Platform or otherwise made available on or through the Waylay Services, documentation or via email;

Organization: legal persons (such as companies) and other entities with which the Waylay Customer is having a business relationship;

Personal Data: any information relating to an identified or identifiable natural person ('data subject') within the meaning of Regulation (EU) 2016/679 (General Data Protection Regulation);

Platform: the Waylay IoT management application for automation, integration and data aggregation for IoT services;

Reseller: third party entity that (i) purchases Waylay Services from Waylay and resells such Waylay Services to Customers, (ii) bills such Customers directly and (iii) provides such Customers with customer

service;

Services: the Website, System, Waylay Content, Platform and all content, services and/or products available on or through the Platform;

Special Terms: any particulars, specifications and conditions by which the parties have agreed to deviate from the terms of this Agreement;

System: the integrated cloud computing solution for providing the Waylay Services, including applications, software, hardware, data bases, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith;

User: a natural person granted with the Authorization to use the Account on behalf of a Customer;

II. WAYLAY RESPONSIBILITIES

Provision of Waylay Services.

Waylay will:

- make the Waylay Services, Waylay Content and Customer Data available to a Customer pursuant to the terms of this Agreement,
- provide applicable standard support for the Waylay Services to Customer at no additional charge, and/or upgraded support (for an additional charge, if applicable),
- use commercially reasonable efforts to make the Waylay Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Waylay shall give advance electronic notice as provided in the Guidelines), and (ii) any unavailability caused by circumstances beyond Waylay's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack.

Protection of Customer Data. When acting as a processor of Personal Data, Waylay will assist the Customer who acts as the data controller in meeting the Customer's obligations under Regulation (EU) 2016/679 (General Data Protection Regulation, providing subject access, and allowing data subjects to exercise their rights under Regulation (EU) 2016/679 (General Data Protection Regulation).

Waylay will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Waylay personnel except (a) to provide the Waylay Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 6 (Compelled Disclosure) below, or (c) as a Customer or User expressly permit in writing.

Your Customer Data remains your ownership at all times.

Only when you explicitly share Customer Data with other Users of the Services, Waylay is and shall be granted a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicenseable and transferable right to use, process, store, copy, reproduce, reformat, translate, modify and create derivative works of your Customer Data (including all related intellectual property rights) in connection with Waylay's provision of the Services. For clarity, the foregoing license grant to Waylay does not affect your ownership of or right to grant additional licenses to the material in your Customer Data. You also acknowledge and agree that Waylay may use your Customer Data internally for improving the Services, and on an anonymized and aggregate basis for the purposes of marketing and improving the Services. However, Waylay will only share your Personal Data in accordance with Waylay's [Privacy Policy](#) in effect from time to time. Waylay will never contact your customers.

Technical Support. Waylay shall provide reasonable technical support to Customer and its authorized User at the reasonable request of the Customer. Waylay shall respond to enquiries of support from a Customer utilizing the contacts set forth below as soon as reasonably possible. Responding to enquiries of Customers and Users who have accepted this Agreement but do not have an Account may be less expedient, or may not occur at all.

The contacts for all enquiries of support are support@waylay.io or via a Waylay ticketing system, as per agreement with the Customer.

Notwithstanding the foregoing, if you purchased access to the Waylay Services from a Reseller, then first-line technical support will be provided by the Reseller and not by the Waylay.

III. ACCESS TO THE SERVICES

The Services and the Website are owned and operated by Waylay. Subject to the terms and conditions of this Agreement, Waylay hereby grants you a non-exclusive license, with no right to sublicense, to make use of the aforementioned Waylay Services. Waylay may change, suspend or discontinue the Services at any time, including the availability of any feature, database, or Waylay Content. Waylay may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. You represent and warrant to Waylay that: (i) you are of legal age to form a binding contract, and you are at least 18 years of age or older; (ii) all registration information you submit is accurate and truthful; and (iii) you will maintain the accuracy of such information. You also certify that you are legally permitted to use and access the Services and take full responsibility for the selection and use of and access to the Services. This Agreement is void where prohibited by law, and the right to access the Services is revoked in such jurisdictions.

IV. WAYLAY CONTENT

The Waylay Content, Website, the Services, and their contents may only be used in accordance with the terms of this Agreement. All Waylay Content is protected by copyright. You shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Waylay Content accessed through the Services, and shall not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Waylay Content or other proprietary rights not owned by you: (i) without the express prior written consent of the respective owners, and (ii) in any way that violates any third party right.

You may download or copy items displayed on the Website or Services for download, provided that you maintain all copyright and other notices contained in such Waylay Content.

V. YOUR WARRANTY

If you, as a Waylay Customer, upload Customer Data to the Platform, such Customer Data and any processing of such Customer Data must be in compliance with the terms of this Agreement and applicable law. All rights, title and interest in and to the Customer Data belong to the Customer or third persons (including Users, persons and Organizations) whether posted and/or uploaded by you or made available on or through the Waylay Services by Waylay. By uploading Customer Data to the Platform, Customer authorizes Waylay to process the Customer Data.

If you provide any Personal Data, including Personal Data relating to your end user customers, to Waylay, you represent and warrant that (i) you will comply with all applicable laws relating to the collection, use and disclosure of Personal Data and (ii) you have made all required notifications and obtained all required consents and authorizations from your website visitors, customer contacts and end user customers relating to the disclosure of Personal Data to a third party service provider like Waylay.

You also warrant, represent and agree that you will not contribute any content or otherwise use the Services in a manner that

1. infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party,
2. violates any law, statute, ordinance or regulation,
3. is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable,
4. impersonates any person or entity, including without limitation any employee or representative of Waylay, or
5. contains a virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program.

Waylay reserves the right to remove any content from the Services at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such content or if Waylay is concerned that you may have breached the immediately preceding sentence), or for no reason at all.

No Guarantee of Accuracy. Waylay does not guarantee any accuracy with respect to any information contained in any Customer Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the Waylay Services. You understand that all information contained in Customer Data is the sole responsibility of the person from whom such Customer Data originated. This means that Customer, and not Waylay, is entirely responsible for all Customer Data that is uploaded, posted, transmitted, or otherwise made available through the Waylay Services, as well as for any actions taken by the Waylays or other Customers or Users as a result of such Customer Data.

Unlawful Customer Data. Waylay is not obliged to pre-screen, monitor or filter any Customer Data or acts of its processing by the Customer in order to discover any unlawful nature therein. However, if such unlawful Customer Data or the action of its unlawful processing is discovered or brought to the attention of Waylay or if there is reason to believe that certain Customer Data is unlawful, Waylay has the right to:

- notify the Customer of such unlawful Customer Data;
- deny its publication on the Website or its insertion to the System;
- demand that the Customer bring the unlawful Customer Data into compliance with these Terms and applicable law;
- temporarily or permanently remove the unlawful Customer Data from the Website or the Services, restrict access to it or delete it.

If Waylay is presented convincing evidence that the Customer Data is not unlawful, Waylay may, at its sole discretion, restore such Customer Data, which was removed from the Website or Services or access to which was restricted. In addition, in the event Waylay believes in its sole discretion Customer Data violates applicable laws, rules or regulations or the terms of this Agreement, Waylay may (but has no obligation), to remove such Customer Data at any time with or without notice.

Compelled Disclosure. Waylay may disclose a Customer's confidential information to the extent compelled by law to do so. In such instance, Waylay will use commercially reasonable efforts to provide Customer with prior notice of the compelled disclosure (to the extent legally permitted) and Customer shall provide reasonable assistance, at its cost, if Customer wishes to contest the disclosure. If Waylay is compelled by law to disclose Customer's confidential information as part of a civil proceeding to which Waylay is a party, and Customer is not contesting the disclosure, Customer will reimburse Waylay for its reasonable cost of compiling and providing secure access to that confidential information.

VI. RESTRICTIONS

You are responsible for all of your activity in connection with the Services. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your right to access or use the Services. You may not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any other user of the Services. Use of the Services to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material (including material that may be considered threatening or obscene), or engage in any kind of illegal activity is expressly prohibited. You will not run Maillist, Listserv, any form of auto-responder, or “spam” on the Services, or any processes that interfere with the proper working of or place an unreasonable load on the Services’ infrastructure. Further, the use of manual or automated software, devices, or other processes to “crawl,” “scrape,” or “spider” any page of the Website is strictly prohibited. You will not decompile, reverse engineer, or otherwise attempt to obtain the source code of the Services. You will be responsible for withholding, filing, and reporting all taxes, duties and other governmental assessments associated with your activity in connection with the Services.

You acknowledge that all Waylay Content and Your Customer Data (together, “Content”) accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom. Under no circumstances will Waylay be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, including without limitation reports generated by the Services, or any loss or damage of any kind incurred in connection with use of or exposure to any Content posted, emailed, accessed, transmitted, or otherwise made available via the Services. You, not Waylay, remain solely responsible for all Content, including messages, that you upload, post, email, transmit, or otherwise disseminate using, or in connection with, the Services.

VII. WARRANTY DISCLAIMER

You acknowledge that Waylay has no control over, and no duty to take any action regarding: which Users gain access to the Services; what Content you access via the Services; what effects the Content may have on you; how you may interpret or use the Content; or what actions you may take as a result of having been exposed to the Content. You release Waylay from all liability for you having acquired or not acquired Content through the Services. The Services may contain, or direct you to websites or applications containing information that some people may find offensive or inappropriate. Waylay makes no representations concerning any content contained in or accessed through the Services, and Waylay will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Services. Waylay makes no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. THE SERVICES CONTENT, WEBSITE AND ANY SOFTWARE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM Waylay OR THROUGH THE WEBSITE WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

VIII. DATA PROCESSING CONTRACT

For the purposes of Article 28 of Regulation (EU) 2016/679, the terms of this Agreement constitute the data processing contract between the Customer as the data controller and Waylay as the data processor. The Customer hereby instructs Waylay to process the data as described in the terms of this Agreement.

By agreeing to this Agreement, the Customer grants Waylay a general authorization in the meaning of Article 28 (2) of Regulation (EU) 2016/679 to engage processors for the purposes of providing the Waylay Services. Waylay will inform the Customer of changes in such processors in accordance with the procedure of modifying this Agreement as stipulated in section 19 of this Agreement.

List of processors:

- Amazon Web Services – cloud computing and storage services in Europe.
- Elastic.co – storage services in Ireland.
- Mlab – storage services in Belgium and Ireland.
- Confluent.cloud - computing and storage services in Belgium.

Subject matter and nature of processing. Waylay provides the Platform where the Customer, as the data controller, can collect, store and organize the Personal Data of data subjects determined by the Customer. The Platform has been designed to work as an IoT automation and aggregation platform, to the extent not regulated by the terms of this Agreement, the Customer decides how they use the Platform.

Duration. Waylay will process data on behalf of the Customer until the termination of the Waylay Services in accordance with the terms of this Agreement. Upon termination, Waylay will delete all Customer's data, including Personal Data as well as existing copies unless if required otherwise under applicable laws.

Parties' rights and obligations. Waylay ensures that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. Waylay takes all measures required pursuant to Article 32 of Regulation (EU) 2016/679. Waylay undertakes to make available to the controller all information necessary to demonstrate compliance with their obligations and to allow for and contribute to audits, including inspections, conducted or mandated by the Customer as the data controller.

IX. PRIVACY POLICY

For information regarding Waylay's treatment of Personal Data, please review Waylay's current Privacy Policy at [Waylay Privacy Policy](#) which is hereby incorporated by reference; your acceptance of this Agreement constitutes your acceptance and agreement to be bound by Waylay's Privacy Policy.

X. REGISTRATION AND SECURITY

Waylay reserves the right to refuse registration of or cancel a User Account in its discretion. Upon registration for the Services, you will provide Waylay with a password to access your Account. You are responsible for maintaining the confidentiality of your password and for all of your activities and those of any third party that occur through your Account, whether or not authorized by you. You agree to immediately notify Waylay of any suspected or actual unauthorized use of your Account. You agree that Waylay will not under any circumstances be liable for any cost, loss, damages or expenses arising out of a failure by you to maintain the security of your password.

XI. INDEMNITY

You will indemnify and hold Waylay, its parents, subsidiaries, affiliates, officers, and employees harmless (including, without limitation, from all damages, liabilities, settlements, costs and attorneys' fees) from any claim or demand made by any third party due to or arising out of your access to the Services, use of the Services, your violation of the terms of this Agreement or applicable laws, rules or regulations in connection with your use of the Services, or the infringement by you or any third party using your Account of any intellectual property or other right of any person or entity.

XII. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT WAYLAY SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES ARISING OUT OF OR CONNECTED TO YOUR USE OF, OR INABILITY TO USE, THE WEBSITE, THE SERVICES OR THE WEBSITE AND SERVICES CONTENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR STATUTORY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OR PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL OR FOR ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF WAYLAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH DAMAGES ARE SOUGHT, WHETHER IN BREACH OF CONTRACT OR IN TORT, INCLUDING NEGLIGENCE.

XII. FEES AND PAYMENT

Waylay reserves the right to require payment of fees for certain or all Services. You shall pay all applicable fees, as agreed with Waylay in connection with such Services. Waylay reserves the right to change its price list and to institute new charges at any time, upon notice to you, which may be sent by email or made available via other electronic media. Your use of the Services following such notification constitutes your acceptance of any new or increased charges. Any fees paid hereunder are non-refundable.

XIV. THIRD PARTY WEBSITES

The Website and Services may contain links to third-party websites and services ("**Third Party Websites**") that are not owned, controlled or operated by Waylay, and you agree that Waylay provides links to such websites solely as a convenience and has no responsibility for the content or availability of such websites, and that Waylay does not endorse such websites or any products or services associated therewith. Your use of such Third Party Websites will be subject to the terms of use applicable to each such website.

XV. TERMINATION

This Agreement shall remain in full force and effect while you use the Services. You may terminate your use of the Services at any time. Waylay may terminate or suspend your access to the Services or your membership at any time, for any reason, and without warning, which may result in the forfeiture and destruction of all information associated with your membership. Waylay may also terminate or suspend any and all Services and access to the Website immediately, without prior notice or liability, if you breach any of the terms or conditions of this Agreement. Upon termination of your Account, your right to use the Services, access the Website, and any Content will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

XVI. MISCELLANEOUS

The failure of either party to exercise, in any respect, any right provided for herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by you except with Waylay's prior written consent. Waylay may transfer, assign or delegate this Agreement and its rights and obligations without consent. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind Waylay in any respect whatsoever. Headings for each section have been included above for your convenience, but such headings do not have any legal meaning, and may not accurately reflect the content of the provisions they precede.

XVII. ARBITRATION, GOVERNING LAW

This Agreement shall be governed by and construed in accordance with Belgian law, without regard to conflicts of law principles that would require the application of any other law. Any action or proceeding arising out of or in relation to this Agreement shall be brought in the courts of Ghent, Belgium. Each of the parties irrevocably submits to the exclusive jurisdiction of such court(s) in any such action or proceeding and waives any objection it may now or hereafter have to venue or convenience of forum.

XVIII. MODIFICATIONS TO THIS AGREEMENT

Waylay reserves the right, in its sole discretion, to modify this Agreement at any time by posting a notice on the Website, or by sending you a notice via email or postal mail. You shall be responsible for reviewing and becoming familiar with any such modifications.

Your use of the Services following such notification constitutes your acceptance of the terms and conditions of this Agreement as modified.

XIX. CONTACT

If you have any questions, complaints, or claims with respect to the Services, you may contact us at dpo@waylay.io.