

ALWAYSDATA
SPECIAL TERMS - HOSTING SERVICE ON A VPS SERVER

(last updated: 8 September 2020)

PLEASE READ THESE SPECIAL TERMS - HOSTING SERVICE ON A VPS SERVER CAREFULLY BEFORE USING THE SERVICES PROPOSED BY ALWAYSDATA.

THESE SPECIAL TERMS SET OUT THE TERMS AND LEGAL OBLIGATIONS THAT APPLY TO ANY PERSON SIGNING UP FOR HOSTING SERVICES ON A MANAGED VIRTUAL SERVER ON WWW.ALWAYSDATA.COM PROPOSED BY ALWAYSDATA.

THEY ARE SUPPLEMENTED BY THE STANDARD TERMS OF SERVICE (THE “STANDARD TERMS”) ALSO AVAILABLE ON THE WEBSITE.

1. Purpose - Acceptance - Validation of Contracts

The purpose of these Special Terms for Hosting Services on a VPS Server (hereinafter the “VPS Special Terms”) is to set out the terms and conditions on which Alwaysdata, a French *société à responsabilité limitée* (private limited company) with a share capital of €200,000, registered in Paris Trade and Companies Register under number 492 893 490, whose registered office is located at 91 rue du Faubourg Saint-Honoré – 75008 Paris, known under its trading name “Alwaysdata” (hereinafter referred to as “Alwaysdata”), provides the Customer with a Data hosting service on a Virtual Private Server (hereinafter referred to as the “VPS Server”) hosted on its host servers (hereinafter referred to as the “Host Server”) including, in particular, the following services:

- creation, provision and rental of a VPS Server,
- hosting of the Customer’s Data on one of its Host Servers,
- maintenance of its Host Servers hosting the Customer’s VPS Server.

(Hereinafter collectively referred to as the “VPS Service”).

The Customer unconditionally accepts the above Services without any restrictions.

These VPS Special Terms supplement the Standard Terms of Service (hereinafter the “Standard Terms”) and the Customer acknowledges that it/he/she is bound by the Standard Terms subject to any amendments that may be made in this contract.

By accepting and/or validating an Order Form produced by Alwaysdata, the Customer is deemed to have unconditionally accepted these VPS Special Terms.

2. Description of the Services

2.1. Hosting on a VPS Server

2.1.1. The VPS Service includes the installation of the partition of the VPS Server on one of the Host Servers owned by Alwaysdata for the Customer, the installation and configuration of the Software delivered as part of the VPS Service, the provision of high-performance System Resources (CPU, RAM etc.), the hosting of the VPS Server from its Host Servers and the connection of the VPS Server to the Internet network via the provision of Bandwidth.

2.1.2. The Customer is informed that Alwaysdata will manage and administer the Host and VPS Servers. However, the Customer remains fully responsible for the Data hosted by the Customer thereon.

Alwaysdata shall use its best efforts to keep the Host and VPS Servers, the System Resources and the Host Server's physical Internet connection in working order.

Alwaysdata undertakes, where applicable, to have any defective items replaced as swiftly as possible, without invoicing the said services to the Customer, unless the problem affecting the Host and/or VPS Server and/or the System Resources was caused by an act or omission of the Customer.

2.1.3. Alwaysdata shall make hardware and software available to the Customer, as stated in the Order Form. The Customer shall ensure that the hardware and software selected are suitable for its/his/her needs. If they prove unsuitable, the Customer will be responsible for contacting Alwaysdata in a timely manner, in order to sign up for another VPS Server or, where applicable, a Managed Dedicated Server with the required characteristics, at the applicable fee and within the limits of the services offered by Alwaysdata at the time of the request. The Customer is informed that it/he/she will not be entitled to any refund or compensation in the event that it/he/she switches to a different VPS Server.

2.1.4. The characteristics of the VPS Server (hardware and software) signed up for by the Customer are those set out in the Order Form. Technical Restrictions may apply to these characteristics. The Customer represents that it/he/she is familiar with these characteristics and Technical Restrictions.

2.2. Maintenance

2.2.1. Corrective Maintenance

This maintenance involves correcting all Errors affecting the VPS Service reported by the Customer. Corrective maintenance work is carried out, at its discretion, as soon as an Error has been reported by one of the Customer's representatives to the Alwaysdata team.

2.2.2. Upgrade Maintenance

This maintenance involves updating the VPS Service and follows the decision-making procedure set out below:

a) If changes affect the management interface of the VPS Server:

If the changes implemented by Alwaysdata affect the management interface of Alwaysdata's VPS Server and/or add a feature to this interface, the Customer is hereby informed that it/he/she will not be given any notice of the changes.

b) If Alwaysdata decides to upgrade the VPS Service:

For any changes other than those referred to in Clause 2.2.2.a, the Customer will be informed of the changes by email or on the scheduled maintenance platform, at least one week before the scheduled date of this upgrade maintenance.

Unless the Customer issues reservations within the abovementioned times, the document and/or the operation will be deemed to have been accepted and Alwaysdata will implement the upgrade.

If the Customer issues a reservation, Alwaysdata undertakes to reconsider the need for the upgrade. However, Alwaysdata will have the final say, at its sole discretion.

c) If the Customer requests a VPS Service upgrade:

If the Customer has specific needs, the Customer should inform Alwaysdata of the need to upgrade the VPS Service and/or the VPS Server.

If the Customer decides to request a VPS Service upgrade:

- that corresponds to the possible upgrades for Alwaysdata's VPS Server or Servers: the upgrade will be scheduled and carried out by Alwaysdata and Alwaysdata will bear all costs incurred in connection with this work, if any;
- that does not correspond to the possible upgrades for Alwaysdata's VPS Server or Servers: the upgrade will not be carried out but Alwaysdata's technical team will study it carefully for a potential general upgrade of the Servers.

In such a case, the Customer may decide not to carry out this upgrade or to migrate the Customer's Server or Servers in accordance with the next paragraph.

The migration of the VPS Service means the upgrading of one or more of a Customer's VPS Servers to the most recent version of all the Services installed on these VPS and/or Host Servers during the installation phase.

An additional fee will be invoiced for the migration of the VPS Service, negotiated on a case-by-case basis between Alwaysdata and the Customer, and in such a case, Alwaysdata will estimate the VPS Service downtime.

2.2.3. Maintenance Limitations

The services set out in this clause do not include the following:

- services provided in connection with the correction of problems caused by the Customer's misuse of the VPS Service or by changes made to the VPS Service by the Customer, without Alwaysdata's permission;
- services that prove to lack a direct connection to the VPS Service;
- any training, installation, consultancy or support services that may be proposed by Alwaysdata through training, installation, consultancy or support contracts and, where applicable, these services will be invoiced separately, at a fee negotiated on a case-by-case basis between Alwaysdata and the Customer;
- any trips to or work carried out at the Customer's site. An additional fee will automatically be charged for these services, negotiated on a case-by-case basis between Alwaysdata and the Customer.

2.2.4. Uptime Guarantees

a) During the VPS Server installation phase:

Alwaysdata will be entitled to a transitional period, commencing on the date on which the Customer signs up for the VPS Service (hereinafter the "Initialisation Phase"), during which it will install the VPS Server for the Customer.

During this period, Alwaysdata cannot guarantee the error-free availability of the Data or the Website that may have been installed on the VPS Server being installed and may not be held liable in this respect.

This period depends on the availability of the one or more Host Servers at the time of registration and generally lasts for less than 30 days.

b) After the VPS Server installation phase:

After the above-mentioned Initialisation Phase, Alwaysdata provides a 99.8% uptime guarantee per month for "critical" services: HTTP, MySQL or other database management systems, IMAP/POP.

This downtime rate does not apply for the other services, in particular FTP, SSH, WebDAV, Webmail or access to the administration console. Maintenance operations are excluded from uptime calculations, for up to 2 hours per month. These maintenance operations will be announced at least one week (unless they are critical, in which case they may be carried out within 24 hours with no prior notice) before the scheduled date and will be carried out, where possible, at night (French time) or in the event of non-domestic operations, at times agreed with the Customer.

If the downtime limit is exceeded (more than 0.2% in one single month), Alwaysdata shall refund 10% (TEN PER CENT) of the monthly fee paid by the Customer for each additional hour of downtime recorded (capped at 100% of this monthly fee).

If the Customer notices that the VPS Service is down, the Customer shall inform Alwaysdata through the in-house communications system implemented (“ticket system”) found in the administration console, giving an accurate description of the issue encountered.

Downtime will be calculated from the time at which the ticket was submitted, if the exact start time of the failure cannot be discovered using the Server logs.

The following are excluded when calculating downtime:

- situations where the Customer changes the DNS server of its/his/her Website to use a provider external to Alwaysdata,
- all failures that are strictly a matter for the Customer, in particular any issues connected to the applications installed on the one or more Servers,
- downtime which only affects part of the network, for example interconnection issues with a specific Internet service provider as set out in Clauses 11 and 15 of the Standard Terms.

2.2.5. Guaranteed Response Time/Mean time to repair

In the event of a complete loss of access to the VPS Server, Alwaysdata undertakes to start work on the relevant Server within 30 minutes following the Customer’s notice of the issue encountered given to Alwaysdata.

Alwaysdata undertakes to restore the Services within 2 hours (7 days a week, 24 hours a day) of the registration of the report. This guarantee does not apply during the activation of the VPS Server or during the 2-day period following a migration of the VPS Server.

If Alwaysdata fails to meet the above targets, for reasons solely attributable to Alwaysdata, it will be liable to pay a penalty, at the Customer’s request, up to a maximum of 1 month’s subscription fees.

3. Designation of the Rented Server

3.1. The Service includes the rental of a VPS Server, with the characteristics set out in the Order Form, for the duration of the subscription for the VPS Service. The VPS and Host Servers shall remain the property of Alwaysdata in all cases. The Customer is informed that it/he/she is not permitted to have any physical access to the Host Server, any access to the root files of the Host and VPS Server or obtain or transfer the server image for its/his/her VPS Server at any time.

3.2. Alwaysdata reserves the right to change the Host Server assigned to the Customer’s VPS Server at any time, in particular if it renews its stock of computer Servers or for compliance work, repairs or hardware maintenance etc.

Alwaysdata undertakes to use its best efforts to give the Customer prior notice thereof.

The Customer is informed that where necessary, Alwaysdata is permitted to migrate the Customer's VPS Service to a new Host Server other than the previously assigned Server. Alwaysdata will be responsible for the technical reconfiguration and complete reinstallation of the Host Server.

However, the Customer undertakes to carry out any operation requested by Alwaysdata as swiftly as possible, including the reconfiguration and reinstallation of its/his/her Services on the VPS Server and, more generally, its/his/her Website.

The Customer will be given prior notice thereof in its/his/her Customer Area.

4. Customer's Representations and Liability

4.1. The Customer represents that it/he/she is aware of the characteristics and operation of the Internet network and the Service, in particular the special features and specific characteristics of the data hosting service on a Virtual Private Server. As regards these special features, the Customer unconditionally acknowledges and accepts that Alwaysdata will not become involved, in any manner whatsoever, in the administration of the Customer's Data hosted on the VPS Server.

4.2. The Customer represents that it/he/she has the hardware, software, skills and, where applicable, staff members required for the use, management, maintenance and updating of its/his/her Data on the VPS Server. The Customer warrants that it/he/she will use the VPS Service in accordance with the applicable specifications and Technical Restrictions.

4.3. The Customer is informed that Alwaysdata will require a copy of a form of identification matching the holder of the Customer Profile for the activation and, where applicable, the continued use of the VPS Server, and this is expressly and unconditionally accepted by the Customer. If the Customer fails to supply this document, the contract may be terminated, as of right, on the sole ground of the Customer's breach, and the VPS Server may also be permanently deleted, with no entitlement for the Customer to claim any refund, credit note or compensation.

4.4. The Customer shall protect the User Credentials for the VPS Server and keep them updated at all times, via its/his/her Customer Area, in the section provided for this purpose. The Customer is informed that if it/he/she breaches this obligation in any way, Alwaysdata may suspend the VPS Server until the Customer has fully fulfilled this obligation, or may even terminate the contract, where applicable, on the sole ground of the Customer's breach, with no entitlement for the Customer to claim any refund, credit note or compensation.

4.5. ANY CUSTOMER SIGNING UP FOR THE SERVICE IS FULLY RESPONSIBLE FOR THE ADMINISTRATION AND MANAGEMENT OF THE DATA IT/HE/SHE HOSTS ON THE SAID VPS SERVER. THE CUSTOMER HAS FULL LIABILITY IN THIS RESPECT.

4.6. The Customer is informed that Alwaysdata will only carry out one backup of the Customer's Data (Website, emails, database etc.), once a day only (at night, French time). Alwaysdata will retain each backup copy, deposited on a different site located several kilometers from the production site, for a period of thirty (30) days. Thereafter, the backup will be permanently deleted.

The Customer is also informed that Alwaysdata will not carry out any additional backup of the Customer's Data (Website, emails, database etc.) for the Customer. Likewise, Alwaysdata will not be involved, in any manner whatsoever, in the handling of the said Data.

Alwaysdata hereby informs the Customer, where necessary, that the Customer is accordingly required to take such steps as are necessary to back up its/his/her Data as often as possible, on external data storage media that are not hosted or managed by Alwaysdata, and to manage its/his/her Data.

Alwaysdata disclaims all liability for the consequences of any failure to fulfil this obligation by the Customer or any other person.

4.7. The Customer is informed that Alwaysdata does not retain any Data on Server connections, in particular the Data containing the IP addresses of the systems that connected to the VPS Server.

Accordingly, the Customer undertakes to take all steps to mitigate the losses that could arise from any degradation of files, memories, documents or other items that the Customer may entrust for the provision of the VPS Service, covered herein. In this respect, the Customer undertakes to keep copies of the documents, files and storage media referred to above.

4.8. In accordance with current standards, Alwaysdata has strengthened the protection and security of its VPS Servers, in particular through a firewall service. However, the Customer is responsible for taking such steps as are necessary to ensure the security of its/his/her Data, thus protecting the Data from any type of hacking, cyber attacks, intrusion or attempted intrusion and to protect the confidentiality of its/his/her User Credentials in accordance with the provisions of Clause 4 of the Standard Terms. Failing this, Alwaysdata may not be held liable.

4.9. The Customer is informed that Alwaysdata will not carry out any act of management and/or administration of the Data for the Customer.

The Customer shall bear all costs connected to the administration and management of the Data located on the VPS Server.

The Customer warrants that it/he/she will take all technical precautions for the use of the VPS Server.

4.10. The Customer expressly undertakes not to use the VPS Server for unlawful purposes in breach of the provisions of Clause 7 of the Standard Terms.

4.11. If the Customer fails to fulfil any one of its/his/her obligations set out in these VPS Special Terms or uses the VPS Service for unlawful purposes and/or if the use of the VPS Service, by the Customer or a third party, impedes the operation of the Internet and/or the Servers of Alwaysdata, its Customers or third parties and/or the networks of third parties, Alwaysdata or its Customers, Alwaysdata may suspend the VPS Service even without prior notice or even terminate the contract as of right, with no entitlement for the Customer to claim any refund, credit note or compensation.

4.12. Alwaysdata also reserves the right to issue any legal proceedings or arbitration proceedings against the Customer or to implement pre-action procedures with the Customer in order to obtain compensation.

5. Alwaysdata's Obligations

5.1. General Provisions

Alwaysdata undertakes to perform the Services ordered from it in a professional manner.

Alwaysdata represents that it is aware of all constraints relating to the provision of its Services, as set out in the Contract and the general and non-specific results expected by the Customer as regards the VPS Server and that it has assessed the nature and importance thereof and is perfectly capable of satisfying these requirements.

5.2. Services

Alwaysdata undertakes to adopt all security, Data backup and control measures jointly agreed by the Parties, as set out in the Order Form.

Alwaysdata undertakes to work together with the Customer's employees and the employees of any Service Provider or subcontractor and, in particular, to provide them with any information that could be relevant for the performance of their tasks. Alwaysdata also undertakes to comply with the operating instructions for the Service issued by the suppliers of the said software.

5.3. Deadlines

If Alwaysdata receives information or discovers a fact, including those attributable to the Customer, that Alwaysdata knows could delay the delivery or performance of all or any part of the Services provided by Alwaysdata for the Customer under the Contract, Alwaysdata undertakes to immediately inform the Customer in writing.

In such a case, the Parties shall consult each other on the action to be taken, where applicable, to potentially reduce the delay and may produce a new completion timetable.

5.4. Nature of the Applicable Penalties

The payment of these sums in the form of penalties compensates the Customer's loss caused by the delay.

5.5. Monitoring of the Services

5.5.1. Alwaysdata's Operational Team

Alwaysdata undertakes, as of the execution of the Contract, to assign an operational team to the performance of the Services for the entire term of the Contract.

This team will act as the core team (hereinafter the “Core Team”), tasked to provide the Services. Alwaysdata shall take such steps as are necessary to ensure that a sufficient number of operational team members are always available, in order to ensure the continuity of the Services in the event that a team member is unavailable, in particular during periods of leave.

Alwaysdata shall warrant the continuity of the skills, knowledge and effectiveness of its Core Team throughout the entire term of the Contract. If the team members change, Alwaysdata will replace them with new team members with equivalent skills and experience or a higher level of skills and experience than the replaced members.

5.5.2. Customer’s Manager

The Customer shall appoint one of its/his/her employees to act as a technical manager, who must be skilled in the use of computers, tasked to coordinate the Customer’s relationship with Alwaysdata.

5.5.3. Acceptance

A joint acceptance procedure must be conducted for the Services. The Parties agree as follows:

- If the Customer fails to reply within one week following the delivery of the Services, they will be deemed to have been impliedly accepted;
- If the Services are used for production purposes, the said Services will be treated as having been accepted;
- The Customer may only postpone acceptance if an Error exists preventing the full operation of the Services;
- After two acceptance attempts in a row, Alwaysdata may decide to terminate the Contract.

6. **Financial Terms and Conditions**

Alwaysdata’s fees are stated in euros, exclusive of tax. VAT will be added to the prices at the rate in force on the invoice date (unless VAT exempt). The flat fee covers the fulfilment of all obligations arising from the Contract.

The fixed fee payable for the Services is due immediately.

The net amount of the invoice is payable upon receipt of a valid invoice, without any discount. If the Customer pays an invoice late, late payment interest will be charged at three times the legal interest rate, after prior formal notice.

The Customer may consult the prices proposed for the VPS Service signed up for in the Order Form and on www.alwaysdata.com.

7. **Term**

The Contract takes effect on the date on which the Customer signs up for the Contract (hereinafter the “Effective Date”).

Unless terminated in accordance with the provisions of the Contract, this Contract is entered into, as of the Effective Date, for a minimum fixed term of:

- Monthly fixed fee: Installation phase + three months.
- Annual fixed fee: Installation phase + one year.

Unless terminated by either Party by notice sent by registered post with acknowledgement of receipt to the other Party at least one month prior to the anniversary of the Contract, it will be automatically renewed for a period equal to the previous period.

8. Traffic and Bandwidth

8.1. Alwaysdata shall provide the Customer with the volume of traffic set out in the Order Form. The Customer is responsible for ensuring that the volume of Traffic corresponds to its/his/her needs, in particular with respect to any Technical Restrictions that may apply.

Alwaysdata may not be held liable for any access problems or temporary inability to access the Website experienced by users caused by disruptions to telecommunications networks. In this respect, the Customer represents that it/he/she has been informed of the constraints and complexity of worldwide telecommunications networks and the increase in the number of Internet users at peak times.

8.2. If the Customer’s monthly Traffic exceeds the volume of Traffic originally allotted to the Customer, an additional fee will be invoiced separately to the Customer for an extra volume of Traffic.

Alwaysdata shall send the Customer the corresponding invoice, to be paid by the Customer immediately upon receipt.

If the Customer fails to pay the corresponding invoice or if the Customer refuses the increased volume of Traffic thus allotted, Alwaysdata shall suspend the VPS Service, as of right, whenever the volume of Traffic allotted is exceeded. Alwaysdata may not be held liable for any VPS Service downtime caused by this suspension. If less than the Customer’s monthly volume of Traffic is consumed, the unused fraction will not be carried over.

9. Technical Restrictions

9.1. Various Technical Restrictions apply to the use of the VPS Service, as stated on the Alwaysdata website and/or in the Customer Area and/or in an email, and the Customer represents that it/he/she is aware thereof and undertakes to comply, at all times, with the terms thereof and any

updates, which the Customer agrees to consult on a regular basis. Accordingly, the Customer will be responsible for taking all appropriate steps to ensure compliance with the Technical Restrictions.

9.2. If the Customer fails to comply with the Technical Restrictions, Alwaysdata reserves the right to terminate the provision of the VPS Service, as of right and on the sole ground of the Customer's breach, with no entitlement for the Customer to claim any refund, credit note or compensation and also to file a complaint against the Customer or any third party in the event of an unlawful use and/or a breach of the security and integrity of its Servers.

10. Subcontracting

Pursuant to the provisions of Clause 22 of the Standard Terms, the Customer gives Alwaysdata express permission to subcontract all or any part of the services set out herein, in particular the administration, management and physical maintenance of the Servers.