

# ALWAYSDATA

## SPECIAL TERMS - REFERRAL SCHEME

*(Last updated: 1 June 2016)*

PLEASE READ THESE SPECIAL TERMS CAREFULLY BEFORE TAKING PART IN THE REFERRAL SCHEME IMPLEMENTED BY ALWAYSDATA.

THESE SPECIAL TERMS SET OUT THE RULES AND PROCEDURES GOVERNING THE OPERATION OF THE REFERRAL SCHEME IMPLEMENTED BY ALWAYSDATA ON [WWW.ALWAYSDATA.COM](http://WWW.ALWAYSDATA.COM).

THESE SPECIAL TERMS ARE SUPPLEMENTED BY THE STANDARD TERMS OF SERVICE AND THE SPECIAL TERMS APPLICABLE FOR EACH SEPARATE SERVICE PROPOSED BY ALWAYSDATA ON ITS WEBSITE. THE FOLLOWING SERVICES ARE PROPOSED ON THE DATE ON WHICH THESE SPECIAL TERMS FOR REFERRALS ARE PUBLISHED ONLINE: SHARED HOSTING SERVICE, DEDICATED HOSTING SERVICE AND HOSTING ON A VIRTUAL PRIVATE SERVER.

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## **Recitals**

Alwaysdata is primarily a hosting service provider, whose services are available on [www.alwaysdata.com](http://www.alwaysdata.com) and currently include the following services, on the date on which these special terms for referrals are published online: shared hosting service, dedicated hosting service and hosting on a virtual private server (hereinafter collectively referred to as the “**Services**”).

Access to the Services is governed by the Standard Terms of Service (the “Standard Terms”) and the special terms applicable for each separate Service provided by Alwaysdata, corresponding, respectively, to the Special Terms for Shared Hosting Services (the “Shared Special Terms”), the Special Terms for Dedicated Hosting Services (the “Dedicated Special Terms”) and the Special Terms for hosting on a Virtual Private Server (the “VPS Special Terms”).

Alwaysdata wishes to expand its customer base and develop customer loyalty and accordingly, it has launched a scheme on its website for referrals (hereinafter the “**Referral**”) under which any of its customers (hereinafter the “**Referrers**”) who agree to recommend the Services to their family and friends, following which the latter in turn become customers of Alwaysdata (hereinafter the “**Referees**”) are rewarded in the form of credit notes or cash payments (hereinafter collectively referred to as the “**Rewards**”).

Accordingly, the purpose of these Special Terms for Referrals (the “Referral Special Terms”) is to set out the terms governing the Referral scheme, it being expressly agreed that capitalised words and expressions will have the meaning assigned in these Referral Special Terms or in the Standard Terms, the Shared Special Terms, the Dedicated Special Terms or the VPS Special Terms, as appropriate, unless the context clearly requires otherwise.

## **Agreement**

### **1. Purpose - Acceptance of the Referral Special Terms**

The purpose of these Special Terms for Referrals, hereinafter the “Referral Special Terms” is to set out the rules and terms governing the Referral scheme organised by Alwaysdata, a French *société à responsabilité limitée* (private limited company) with a share capital of €5,000, 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”).

Any person taking part in the Referral scheme is deemed to have previously and unconditionally accepted these Referral Special Terms in accordance with the technical procedures in force on the Alwaysdata Website on the date of the Referral.

## **2. Terms and Conditions of the Referral Scheme**

All private individuals aged 18 or over and all legal entities residing in France or elsewhere are eligible to take part in the Referral scheme.

Accordingly, the Referrer and the Referee may be either a private individual or a legal entity.

The Referral scheme only works if the Referrer and the Referee are different persons.

Also, the Referrer must have already been a customer of Alwaysdata for at least one month on the date of the recommendation of the one or more Services in question and the Referee must sign up for any one of the Services recommended by the Referrer within no more than 3 (three) months of the date of the recommendation

In order to refer a new customer under the Referral scheme, the Referrer must recommend Alwaysdata’s Services to the Referee following the technical procedures in force on the Alwaysdata Website on the date of the Referral (in particular: the Referrer needs to send the Referee a Referral code or a unique URL tracking code primarily used by Alwaysdata to identify the Referrer and process the Referral).

The Referee must sign up for the relevant Service or Services and accordingly become an Alwaysdata customer following the technical procedures in force on the Alwaysdata Website on the date of the Referral (in particular: the Referee must use the referral code or the unique URL tracking link sent by the Referrer).

The Referrer may recommend the Services to as many Referees as the Referrer wishes. Once the Referee has become an Alwaysdata customer, the former Referee may in turn recommend the Services to as many Referees as it/he/she wishes, to allow them in turn to become Alwaysdata customers, and so on.

Each Referee may only have one single Referrer. If a Referee receives recommendations from several Referrers, only the first recommendation validly registered in Alwaysdata’s IT systems will be taken into account for this Referral scheme and only the dates and times recorded in the said IT systems will be authoritative.

However, the Referral scheme may only be used to recommend the Services to a tight circle of family, friends and acquaintances and the Referrer must actually and effectively know all Referees.

It is expressly agreed that the large-scale recruitment of Referees in breach of the rules set out in this Clause 2, without charge or in a directly or indirectly profitable manner, using any means such as, in particular, websites, social networks, blogs or advertisements of any kind and on any type of medium, is strictly prohibited.

Accordingly, if a Referrer conducts any type of large-scale recruitment of Referees, the Referrer may, in particular, be temporarily or permanently excluded from the Referral scheme, without prejudice to any damages that Alwaysdata may otherwise be entitled to claim and any other appropriate sanctions under the laws in force.

### **3. Validation of the Referral**

Each Referral will be validated within at least 20 (twenty) days of the date on which the Referee signs up for any one of the Services proposed on the Alwaysdata Website, in accordance with the provisions and following the technical procedures set out in Clause 2 hereof.

Accordingly, Alwaysdata reserves the right to check that the Referrer and the Referee have complied with the terms and procedures, notably technical, of the Referral scheme, as set out in Clause 2 hereof.

By taking part in the Referral scheme, the Referrer and the Referee therefore authorise Alwaysdata to carry out such checks and verifications as are necessary for the valid implementation of the Referral scheme.

If any irregularities are discovered, the relevant Referral will be cancelled along with the corresponding Rewards, without prejudice to any other action, in particular for compensation, that Alwaysdata may decide to take against the person or persons responsible for the irregularities.

In particular, if Alwaysdata discovers that the Referee is already an Alwaysdata customer, the Referrer will be informed and will not be entitled to claim any Reward.

### **4. Granting of Rewards**

For each valid Referral, the Referrer will be entitled to a Reward in an amount of 20% (twenty per cent) of the price excl. tax charged on the Alwaysdata Website on the date of the recommendation for the Service signed up for by the Referee.

The Reward only applies for the Services signed up for by the Referee within 3 (three) months of the date of the recommendation, under the Referral scheme. Accordingly, the Referrer will not be entitled to claim any Reward for any Services that the Referee may sign up for after this period of 3 (three) months.

Likewise, the Reward only applies for the first year of the subscription for the Service (one year from the start date). Accordingly, the Referrer may not claim any Reward for the Services renewed or signed up for by the Referee after the first year of recommendation.

Rewards will be paid in accordance with the same arrangements as selected by the Referee for the payment of the relevant Service. Accordingly, if the Referee decides to make a one-off payment for the entire year, the Referrer shall receive, in one single payment, a Reward in an amount of 20% (twenty per cent) of the annual price excl. tax paid by the Referee for the relevant Service. If the Referee decides to pay in monthly instalments, the Referrer will receive a Reward of 20% (twenty per cent) of the monthly price excl. tax paid by the Referee for the relevant Service.

The Referrer may elect – via its/his/her Customer Area or Admin Area – to receive the Reward in cash (hereinafter a **“Cash Payment”**) or in the form of a credit note (hereinafter the **“Credit Note”**).

For each separate Referral, the election to receive a specific type of Reward is irrevocable and the two types of Reward cannot be combined. Accordingly, for a given Referral, the Referrer is not entitled to receive the Reward as a Credit Note if the Referrer initially asked for a Cash Payment or vice-versa and may not combine a Cash Payment and a Credit Note.

If the Referrer is not registered with *URSSAF* (Collection Agency for Social Security Contributions), the Referrer’s Rewards received in the form of a Cash Payment are capped at two payments of 1,000 (one thousand) euros excl. tax each per year, corresponding to a maximum aggregate amount of 2,000 (two thousand) euros excl. tax per year. This one-year period commences on the date on which the Referral is validated, as set out in Clause 3 hereof.

If the Referrer is registered with *URSSAF*, there will be no upper limit on the Referrer’s Rewards received in the form of a Cash Payment, which may accordingly exceed the above-mentioned threshold of 2,000 (two thousand) euros excl. tax per year.

Likewise, there will be no upper limit on the Rewards received in the form of a Credit Note, which may accordingly exceed the above-mentioned threshold of 2,000 (two thousand) euros excl. tax per year, whether or not the Referrer is registered with *URSSAF*.

## **5. Payment of Rewards**

Each Reward will be paid within no more than two months of the date on which Alwaysdata received payment of the price from the Referee for the Service signed up for following the Referral.

Rewards received in the form of a Cash Payment will be paid upon the submission of an invoice issued by the Referrer, based on the information provided in its/his/her Customer Area. They will be paid by wire transfer to the relevant bank account or PayPal account, the details of which must first be provided to Alwaysdata by the Referrer.

Rewards received in the form of a Credit Note will be delivered to the Referrer in accordance with the technical procedures in force on the Alwaysdata Website on the date of delivery. They may only be used by the Referrer to pay for the Services on the Alwaysdata Website.

If a Reward is not delivered to the relevant Referrer within the time prescribed in the first paragraph of this Clause 5 for any reason beyond Alwaysdata's control, the Referrer will cease to have any right to claim the Reward.

**6. Loyal Participation in the Referral Scheme – Compliance with the Laws and Regulations in Force**

The Referrer and the Referee agree to take part in the Referral scheme in a loyal manner, without committing any irregularities whatsoever, and to strictly comply with the terms of these Referral Special Terms and, more generally, the laws and regulations in force.

In particular, the Referrer and the Referee undertake not to act in any way that could distort or disrupt, in any manner whatsoever, the Referral scheme.

Accordingly, in the event of any type of fraud or irregularities, as assessed by Alwaysdata at its unfettered discretion, Alwaysdata may, in particular, amend, stop or cancel the relevant Referral and the corresponding Reward without prior notice and in such a case, it may not be held liable in this respect, in any circumstances whatsoever.

**7. Commercial and Advertising Communications**

The Referrers and the Referees authorise Alwaysdata to use their full names for advertising purposes in its commercial and advertising communications, but this will not cause them to be entitled to any remuneration, rights or benefits whatsoever other than the Reward granted for the corresponding Referral.

**8. Availability of the Website, the Services and the Referral Scheme – Maintenance and Upgrades**

The Alwaysdata Website, the Services and the Referral scheme are available 7 days a week, 24 hours a day, subject to any periods of suspension, primarily for maintenance purposes.

Accordingly, the Parties agree that access to the said Website and/or the Services and/or the Referral scheme may be temporarily interrupted for maintenance, updates or upgrades of the Website and/or the Services and/or the Referral scheme or for any other operations, in particular technical operations. Where possible, Alwaysdata shall carry out these operations at the times causing the least disruption to the access to the Website and/or the Services and/or the Referral scheme.

In any case, the Referrers and/or the Referees will not be entitled to bring any claim or receive any compensation in this respect.

Alwaysdata also disclaims all liability for any errors that may occur during the registration process on the Website or during the use of the Services or the Referral scheme.

## **9. Intellectual Property**

The Referrer and the Referee undertake not to infringe the intellectual property rights associated with the Alwaysdata Website, its content (of any kind whatsoever), the Services, the Referral scheme and any third-party intellectual creation available from the Website or its content.

In particular, the Referrer and the Referee undertake not to exploit these creations other than on the terms and conditions and for the purposes set out herein.

## **10. Liability - Limitations**

Each Party's liability will be governed by the provisions of Article 1146 *et seq.* of the French Civil Code (*Code Civil*).

Moreover, the compensation that may be claimed from Alwaysdata is capped at the amount of the Reward potentially payable to the Referrer following the relevant Referral, in any circumstances whatsoever and on all grounds combined, provided that it was validly earned without any fraud.

Additionally, Alwaysdata will not be liable, in any circumstances whatsoever, if the alleged failures were caused, in particular, by a force majeure event or an act of state or one of the following events:

- (i) wrongful conduct, negligence or omission by a third party over which Alwaysdata has no control or supervision powers;
- (ii) damage caused by computer viruses, hacking or intrusions in the IT system of Alwaysdata or its partners and, more generally, in the component IT systems and sub-systems, or by their excessive use designed to cause problems or prevent operation;
- (iii) faults in the electricity supply network, strike, riot, terrorist attack, war, storm, earthquake, volcanic eruption, tsunami, fault in the telecommunications network, loss of Internet connection due to public and/or private operators used by Alwaysdata.

Likewise, Alwaysdata will not be liable for any indirect damage, such as financial or commercial losses, lost earnings, increased overheads, disruption to scheduling, lost profit, lost customers, loss of anticipated savings, lost data or loss of chance.

Alwaysdata along with the Referrer and the Referee expressly agree that all obligations accepted by Alwaysdata hereunder are best efforts obligations only.

## **11. Force Majeure**

If a force majeure event occurs, as defined in substantive law, preventing the performance of these Special Terms for Referrals, they will be suspended for the duration of the said event.

The Party unable to fulfil its/his/her contractual obligations on account of the force majeure event shall inform the other Party within no more than seven (7) days of the occurrence of the said event, by letter sent by registered post with acknowledgement of receipt or by email.

The Parties will immediately meet in order to examine the situation and, in particular, the expected duration of the event or events creating the force majeure situation and the extent of its impact on these Referral Special Terms. They will together agree the steps to be taken to mitigate the consequences of such an event.

However, if the suspension lasts for more than thirty (30) days, the Parties reserve the right to terminate these Special Terms for Referrals at their discretion and without any entitlement to compensation, in which case they may not be held liable in this respect.

## **12. Personal Data - Data Protection Act**

### **12.1. Declaration - consent to the collection and processing of personal data**

The Alwaysdata Website and the Services proposed on this website have been declared to the French Data Protection Agency (CNIL - *Commission Nationale de l'Informatique et des Libertés*) under number 1226053.

The Referrer and the Referee, whose agreement is guaranteed by the Referrer, hereby authorise Alwaysdata to collect and process their personal data and to use it to manage their accounts, the Services or the Referral scheme, or to send them relevant information and newsletters along with information on the business activities of Alwaysdata or its partners located within the European Union.

In particular, the Referrers warrant that they have obtained the express consent of their Referees for the collection and communication to Alwaysdata of their personal data, to allow Alwaysdata to lawfully use this data for the purposes of the Referral scheme set out herein.

Lastly, pursuant to the French Data Protection Act of 6 January 1978, the Referrer and the Referee have the right to access, change and delete their personal data. They may exercise this right by writing to the following (enclosing proof of their identity):

#### **ALWAYSDATA**

Service des Relations Clients

91 rue du Faubourg Saint-Honoré – 75008 Paris

Email: [contact@alwaysdata.com](mailto:contact@alwaysdata.com)

However, Alwaysdata reserves the right to delete some of the data recorded in the base containing the data thus provided and to restrict the amount thereof.

### **12.2. Retention and archiving of the personal data of Referrers and Referees**

Alwaysdata undertakes to implement technical and organisational procedures to retain and archive the personal data of Referrers and Referees.

However, the Referrers and Referees represent that they are fully familiar with the characteristics and constraints of the Internet. In particular, they acknowledge that nobody can guarantee the

complete security of data transferred via the Internet. Accordingly, Alwaysdata may not be held liable for any incidents that may arise from this transfer.

### **12.3. Cookies and statistics**

When using the Alwaysdata Website or the Services or taking part in the Referral scheme, cookies generated by the IT servers of Alwaysdata or its partners may be automatically installed on the computer of the Referrers or the Referees. These cookies are solely designed to allow or facilitate electronic communications and are strictly necessary for the provision of an online communications service at the express request of the user, including in particular: measuring the number of pages visited, the number of visits and the activity of the user on the Alwaysdata Website.

The Referrers and Referees may disable these cookies, change them or delete them at any time and without charge, through the options proposed in the browser they use.

However, if they set their browser to disable cookies, certain pages, areas and features of the Alwaysdata Website or the website of its partners may cease to be available.

### **13. Term - Renewal**

Without prejudice to the provisions of Clause 6 above, these Referral Special Terms are agreed for an initial continuous period of twelve (12) months. Thereafter, they will be automatically renewed for further one-year periods, unless terminated by either Party, by giving prior notice of two (2) months sent by registered post with acknowledgement of receipt.

### **14. Termination**

If any Party fails to fulfil its/his/her contractual obligations, the injured Party may terminate these Referral Special Terms at any time, fifteen (15) days after giving formal notice to the other Party by registered post with acknowledgement of receipt or by email, with which the defaulting Party fails to comply within this period.

### **15. Acceptance and Enforceability of the Referral Special Terms**

The Referrer will accept these Special Terms for Referrals by clicking on the “I accept the Referral Special Terms” button displayed during the acceptance or participation process for the Referral scheme.

The Referee will be deemed to accept these Special Terms for Referrals when it/he/she signs up for the one or more Services recommended by the Referrer and accordingly becomes an Alwaysdata customer by following the technical procedures in force on the Alwaysdata Website on the date of the Referral (in particular: the Referee must use the referral code or the unique URL tracking link sent by the Referrer).

In any case, any person taking part in the Referral scheme is deemed to have previously and unconditionally accepted these Referral Special Terms in accordance with the technical procedures in force on the Alwaysdata Website on the date of the Referral.

#### **16. Enforceability of Electronic Documents**

The Parties expressly agree that the information and data taken from the IT system of Alwaysdata or its partners are to be treated as written proof within the meaning of Article 1316-1 of the French Civil Code and that the connection between this data and the relevant Party will be presumed until proven otherwise.

Accordingly, they are admissible as evidence between the Parties and are binding on them in the same manner, on the same terms and with the same probative value as any written document signed in paper form by the Parties.

The same will apply, in particular, to emails exchanged between the Parties using their email addresses and to the usernames and passwords used by the Referrer or the Referee to access their Admin Area, manage it and carry out all steps relating, in particular, to the Referral.

Each Referrer and each Referee expressly acknowledges and accepts that its/his/her consent to, in particular, the collection, processing, retention and archiving of its/his/her personal data, as provided for in Clause 12 hereof, may be proven by producing information and data taken from the IT system of Alwaysdata or its partners.

Lastly, emails exchanged between the Parties will be deemed to have been validly received upon their dispatch, unless proven otherwise. Likewise, the usernames and passwords will be deemed to have been used by the relevant Referrer or Referee.

#### **17. Amendments - Revision of these Special Terms for Referrals**

Alwaysdata may revise, amend or update these Special Terms for Referrals at any time and without prior notice. However, any amendments will only apply effective from the date on which they are published online on the Alwaysdata Website and will not have retroactive effect.

#### **18. Severability - No Waiver**

If one or more provisions hereof are considered to be invalid or held invalid under a law, regulations or following a final judgment issued by an appropriate court, they will be deemed to have been severed and this will not affect the validity of the other provisions unless they are inseparable from the invalid provision or provisions.

If a Party fails to act on any breach hereof, this will not be treated as a waiver of the Party's right to act on any future breach, whether identical or different. Waivers are only valid if made in writing.

## **19. Entire Agreement**

These Special Terms for Referrals, supplemented by the Standard Terms and also, as appropriate, by the Shared Special Terms, the Dedicated Special Terms or the VPS Special Terms referred to in the Recitals hereto, constitute the entire agreement between the Parties. They exclude any exchange that has not been expressly defined as part of Alwaysdata's contractual relationship with the Referrer and the Referee.

If any provisions of the Standard Terms of Service or the Special Terms applicable for each separate Service conflict with these Special Terms for Referrals, the latter will prevail.

## **20. Disputes**

In the event of a dispute, the Parties shall endeavour to reach an out-of-court settlement before issuing legal proceedings.

Accordingly, the Parties shall make every effort to ensure that an out-of-court settlement is reached within thirty (30) days of notice of the existence of the dispute given by either Party.

If the Parties fail to reach an out-of-court settlement within this period of thirty (30) days, either Party may refer the dispute to the Court of competent jurisdiction, unless the dispute is between Alwaysdata and a trader.

If the dispute is between Alwaysdata and a trader, the dispute will be subject to the exclusive jurisdiction of Paris Commercial Court (*Tribunal de Commerce*), even in cases involving multiple defendants or third-party claims for indemnity.