

# ALWAYSDATA

## STANDARD TERMS OF SERVICE

(Last updated: November 1<sup>st</sup>, 2021)

PLEASE READ THESE STANDARD TERMS OF SERVICE CAREFULLY BEFORE USING THE SERVICES PROPOSED BY ALWAYSDATA.

THESE STANDARD TERMS SET OUT THE TERMS AND LEGAL OBLIGATIONS THAT APPLY TO ANY PERSON SIGNING UP FOR ALWAYSDATA SERVICES ON [WWW.ALWAYSDATA.COM](http://WWW.ALWAYSDATA.COM) PROPOSED BY ALWAYSDATA.

### **1. Purpose - Acceptance - Validation of Contracts**

The purpose of these Standard Terms of Service (the “Standard Terms”) and the special terms (the “Special Terms”) specific to the one or more Services ordered by the Customer, 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 Services to Customers.

By using the Services provided by Alwaysdata, the Customer is deemed to have first become familiar with the Standard Terms and the Special Terms specific to the Services proposed by Alwaysdata (shared hosting service, managed dedicated hosting service, gold hosting service, free plan etc.), to have accepted them without any exceptions or reservations by following the technical procedures in force on the Alwaysdata website at that time and to have agreed to strictly comply with the said terms.

Alwaysdata and each Customer expressly agree that their relationship is not governed by any contractual provisions other than those referred to in the Standard Terms, the Special Terms applicable for the one or more Services ordered and the Purchase Order validated by each Customer.

All of these contract documents constitute the law between the Parties and are hereinafter collectively referred to as the “Contract”.

### **2. Verification of Suitability**

The Customer represents and acknowledges that before signing up for the one or more Services, the Customer checked the suitability of the said Services for its/his/her needs and that the Customer does in fact consider them to be suitable for these needs. Likewise, the Customer represents and acknowledges that Alwaysdata has provided it/him/her with all the information and advice needed to enter into this Contract, and accordingly, the Customer waives any right to bring any claim in this respect.

The Customer also represents that it/he/she has the required knowledge, skills and resources, in particular human and technological resources, for the use of any ordered Service and that accordingly, the Customer also waives any right to bring a claim in this respect.

### 3. **Definitions**

The following terms and expressions, where capitalised and whether they are used in the singular or in the plural in these Standard Terms or in any supplementary Special Terms, will have the meaning assigned below unless the context otherwise requires:

- “**Admin Area**” or “**Customer Area**”: the Customer’s private online area on the Alwaysdata website containing, in particular, information on the Services provided by Alwaysdata and allowing the Customer to manage the said Services.

- “**Administration**”: any act of management for the operation and use of the Server. These acts include, in particular, saving data, settings, publication and data and application updates etc.

- “**Error**”: means any material problem affecting the physical machines used and any problem affecting the Service.

- “**Bandwidth**”: maximum amount of data transferred on the Internet network, usually expressed as the number of bits per second, with the rate being determined by Alwaysdata. The Bandwidth may be shared between several different Customers (shared hosting service) or may be assigned to one single Customer (managed dedicated hosting service).

- “**Customer**”: any private individual or legal entity (whether public or private) with the legal capacity to contract who accordingly enters into a Contract for the Services proposed by Alwaysdata.

- “**User Credentials**”: username (“Username”) and password (“Password”) chosen by the Customer to allow the latter to access the Services and manage them via the Admin Area.

- “**Special Terms**”: the contractual terms governing each specific Service proposed by Alwaysdata (shared hosting service, managed dedicated hosting service, gold hosting service, free plan etc.).

- “**Consumer**”: means, for the purposes of the French Consumer Code (*Code de la Consommation*), any private individual acting for any purpose other than his/her commercial, industrial, small-scale or freelance activity.

- “**Data**”: any electronic document or digital file installed or changed by the Customer when using the Server and/or the Services.

- “**Publisher**”: means the private individual or legal entity publishing a piece of software, who accordingly holds the corresponding intellectual property rights.

- “**Email**”: electronic mail sent via the Internet network using various protocols: POP, IMAP, etc.

- “**Major Upgrade**”: means any analysis and development work lasting for more than two days, carried out by Alwaysdata for the Customer.

- “**Order Form**”: online purchase order available on the Alwaysdata website (<https://www.alwaysdata.com/en/>), to be used to validate the Service signed up for by the Customer. For the purposes hereof, the expressions “**Order Form**” and “**Purchase Order**” refer to the same form.

- “**Guaranteed Response Time**”: maximum time in which a member of Alwaysdata’s staff will respond, expressed in business hours, guaranteed by Alwaysdata in the event of Downtime.

- “**Guaranteed Resolution Time**”: maximum time for a return to operation (temporary or permanent solution) expressed in business hours, guaranteed by Alwaysdata in the event of Downtime.

- **“Downtime”**: any technical failure preventing physical access to the Website and/or the Data and/or the Services.
- **“Personal Data”**: any information provided by the Customer, to allow the latter to be identified by Alwaysdata (surname, first name, postal address, email address, telephone number, company name and organisation name, where applicable etc.).
- **“Infrastructure”**: all technical equipment: servers, switch, load balancer etc. used by Alwaysdata to provide the Service.
- **“Static IP”** or **“IP Address”**: a numerical label representing 32 bits (IPV4) or 128 bits (IPV6) providing a unique identifier for each Server connected to the Internet.
- **“Software”**: a set of computer programs, databases, scripts, processes and operating systems etc. designed to process data automatically and made available to the Customer by Alwaysdata and/or by their respective publishers as part of the Service.
- **“Party”**: Alwaysdata or the Customer, as appropriate. The term **“Parties”** refers to both Alwaysdata and the Customer.
- **“System Resources”**: storage capacity, RAM and ROM of the Server and its processor (CPU), the corresponding Software and the Bandwidth capacity made available to Customers by Alwaysdata as part of the Service.
- **“Technical Restrictions”**: technical restrictions on the use and exploitation of the Service imposed by Alwaysdata, primarily due to the characteristics of the server and/or the Infrastructure, Alwaysdata’s sales policy, Alwaysdata’s technological choices or technological developments etc.
- **“Server”**: computer performing the functions (including storing files, transferring emails etc.) with the exception of the software, used by Alwaysdata to provide the Service.
- **“Dedicated Server”**: Server whose entire storage space is reserved for the Data of one single Customer.
- **“Shared Server”**: Server whose storage space is shared by several Customers.
- **“Service(s)”**: service provided by Alwaysdata, involving the provision of online services including, in particular, the provision of Data hosting services, the provision of managed dedicated or shared Servers for hosting, the installation and maintenance of Software on the Server to allow its use by the Customer, access to an FTP server, the creation and hosting of Emails and the provision of the corresponding management, monitoring and supervision services, 24 hours a day, 7 days a week, save in the event of a Service(s) interruption for maintenance purposes.
- **“Additional Service(s)”**: services that were not stated in the Order Form, that the Customer wishes to receive. In such a case, the Customer will place a specific or supplementary order with Alwaysdata.
- **“Free Plan(s)”**: services provided by Alwaysdata as part of the Service, at no cost.
- **“Managed Dedicated Hosting Service(s)”**: Data storage and processing services, via the provision of a Server managed by Alwaysdata, System Resources, Software and Bandwidth made available to one single Customer, to be used to publish the Customer’s Data on the Internet network.
- **“Shared Hosting Service(s)”**: service involving the provision by Alwaysdata of storage space (as described in the Purchase Order) on Alwaysdata’s Server and/or Infrastructure, to which System Resources are assigned, shared by several Customers, to be used to publish Customers’ Data on the Internet network.
- **“Website”**: the website(s), computer applications, software packages, software and databases etc. and the Customer’s corresponding content published on the Internet network.
- **“Traffic”**: amount of computer Data sent or received by the Customer on or from the Server and/or the Website over a given period. Monthly traffic is measured as the amount of Data transferred from and to the Customer’s website or server.
- **“Processing”**: process by which Alwaysdata’s teams approve the Customer’s request

relating to the order for the Service, causing Alwaysdata to prepare the Service in order to make it available to the Customer.

#### **4. Signing-Up – Registration**

4.1. The Customer is informed that it/he/she may only sign up for the Service online, on the Alwaysdata website (<https://www.alwaysdata.com/en/>).

During the registration process, the Customer undertakes to follow the instructions given on the Alwaysdata website and to provide its/his/her personal data (surname, first name, postal address, email address, company name and organisation name, where applicable etc.) in a correct, accurate and truthful manner.

The Customer is reminded that Alwaysdata has no liability, in any circumstances whatsoever, for the content, the accuracy, the genuineness, the completeness, the relevance or the scope of the information provided by the Customer for this purpose.

4.2. The Customer must keep its/his/her personal data updated at all times. If the data provided proves to be inaccurate, incomplete or false, Alwaysdata reserves the following rights, with no right for the Customer to claim any refund, credit note or compensation, in any circumstances whatsoever:

- (i) The right to decide not to activate and/or to suspend the Service until the Customer corrects the errors;
- (ii) The right to terminate the one or more Contracts, as of right.

The same will apply if the appropriate bodies (for example, banks or holders of credit/debit cards) challenge the payments made by the Customer.

4.3. Once the registration form has been validated, the Customer will need to choose its/his/her User Credentials in the form of a username consisting of the Customer's email address and a password. To this end, the Customer must choose a password that is at least twelve characters long and contains at least one lower case letter, one upper case letter, one numeric character and one special character. The Customer acknowledges that the username and password are the sole means to be used to identify the Customer and validate the Customer's access to the Services and the Admin Area, and that no other means may be used.

4.4. The Customer has sole responsibility for retaining its/his/her username and password. The Customer may authorise any trusted person of its/his/her choice to access the Admin Area, at any time and for any reasons whatsoever, under the Customer's sole liability. Accordingly, the Customer undertakes to maintain the absolute confidentiality of the username and password and to log out at the end of each session. For security reasons, the Customer is required to change them regularly, at least once every three months.

4.5. Whenever the said username and password are used, they will be deemed to have been used by the Customer and the latter shall bear the consequences of any use of the said username and password, even if by fraud.

4.6. The Customer agrees that any acts carried out using the above-mentioned username and

password will be automatically treated as having been carried out by the Customer directly and as binding acts. The Customer agrees that any computer or electronic records made by Alwaysdata and/or its providers for the provision of the Services, of any acts carried out, primarily through the Customer's Admin Area, may be relied on or used before any appropriate administrative authority and/or court of law as evidence.

4.7. The Customer acknowledges that it/he/she is solely liable for any acts carried out using its/his/her User Credentials. The Customer undertakes to use them on a strictly personal basis only.

In the event of a loss, theft or any fraudulent act affecting the User Credentials, the Customer shall be responsible for giving Alwaysdata swift notice by email and/or registered post with acknowledgement of receipt, and will need to prove its/his/her identity, using any available means. Upon receipt of this duly justified written notice, Alwaysdata will examine the matter and may suspend any form of access to the Admin Area, for security reasons. Alwaysdata will process the Customer's request as swiftly as possible and provide the Customer with new temporary User Credentials by return email. The Customer must accordingly use them to access its/his/her Admin Area and then change them as swiftly as possible.

## **5. Duration of the Service**

The Standard Terms take effect on the date on which the Customer registered on the Alwaysdata website. The provision of the one or more Services will commence on the same date.

Unless the Parties agree better terms, these Standard 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.

The Customer is informed that at the end of the Contract, howsoever caused, all Services will be automatically stopped and then deleted, on the expiry date stated in the Admin Area and by Email.

## **6. Nature of the Services - Fees and Payment**

6.1. The nature and type of the Services provided by Alwaysdata are described in each set of Special Terms accepted by the Customer and/or on the Alwaysdata website. The fees charged for the Services and the terms, conditions and time for payment are notified by email and/or on the Alwaysdata website.

6.2. The Customer shall pay, within the agreed times, the total fees set out in the Purchase Order, including VAT, where applicable, and shall bear any and all costs associated with payment, including bank charges (for making and receiving transfers).

6.3. If the fees are paid by cheque or wire transfer, the Customer shall state the order number, its/his/her personal data, the Customer account number, where applicable, its/his/her website and any information identifying the payment and the corresponding order.

6.4. The Customer is informed that Alwaysdata will not fulfil the order if only a partial or incomplete payment is received.

ALWAYSDATA SARL - 91 rue du Faubourg Saint Honoré - 75008 Paris - France

A French *société à responsabilité limitée* (private limited company) with a share capital of €200,000, Paris Trade and Companies Register No. 492 893 490 - French Activity Code (*Code APE*): 6311Z - VAT No: FR 66493893490

6.5. Alwaysdata disclaims all liability for any loss of data or late processing of an order etc. caused by a failure to comply with any one of the provisions of Clause 6 hereof (Nature of the Services - Fees and Payment).

6.6. Invoices will be made available in the Admin Area. The Customer will be informed of this in an email sent to the address stated in the Customer profile. Accordingly, the Customer is required to update the email address stated in its/his/her Customer profile whenever necessary.

6.7. Subject to the special provisions set out in Clause 5 hereof (Duration of the Service), no refund will be given for any suspension, cancellation or transfer of the Service due to an act or omission by the Customer or following any wrongful conduct by the Customer in the fulfilment of the obligations set out herein, prior to the end of the contractual period in force at that time.

6.8. If the Customer fails to pay an invoice on time and after formal notice given by registered post with acknowledgement of receipt with which the Customer fails to comply within fifteen (15) days of receipt, Alwaysdata will charge late payment interest on the outstanding amount, at three times the legal interest rate, effective from the date of the above-mentioned formal notice.

6.9. The fixed debt collection fee owed to the creditor in the event that the outstanding amounts are paid after the said date is set at €40 (forty euros), pursuant to Decree No. 2012-1115 of 2 October 2012 setting the amount of the fixed debt collection fee in commercial transactions provided for in Article L. 441-10 of the French Commercial Code (*Code de Commerce*).

6.10. If the debt collection costs incurred exceed the amount of this fixed debt collection fee, the creditor is entitled to demand additional compensation, against receipts.

## **7. Use of the Services and Liability of the Customer**

### **7.1. Compliance of the Customer's Website**

The Customer warrants to Alwaysdata that it has obtained all administrative authorisations and made all administrative declarations required for the operation of the Website hosted on Alwaysdata's Server.

The Customer warrants, in particular, that it/he/she:

- i) Has carried out all the legal and regulatory diligence to be in compliance with the General Data Protection Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) and with the French Data Protection Act No. 78-17 of 6 January 1978 as subsequently amended;
- ii) Inserts all mandatory legal notices on its/his/her website, in particular, the publisher's name and full contact details, the name of the Director or co-Director responsible for publishing its/his/her Website along with the name and contact details for Alwaysdata, as the hosting service provider, pursuant to the provisions of Article 6-III-1 of the French Digital Economy Confidence Act of 21 June 2004.

The Customer undertakes to complete all formalities and steps required under the laws and regulations in force, directly and without any type of involvement by Alwaysdata, primarily with respect to the nature of the Services selected by the Customer. Alwaysdata disclaims all liability for any dispute or court award that may arise from the Customer's failure to comply with applicable regulations.

## 7.2. Editorial Control

7.2.1. The Customer undertakes not to use the Services for any unlawful purposes and not to in any way breach applicable national and international rules or statutory, regulatory or administrative provisions.

The Customer warrants to Alwaysdata that it will only use the Service for strictly lawful purposes.

7.2.2. The Customer warrants especially, at all times, that it/he/she:

- is the sole owner of the information and data that the Customer publishes on its/his/her Website and/or has the right to publish this information and data;
- will not infringe, by the publication of this information or data, any protected rights, covering both human rights and those protected under the French Intellectual Property Code (*Code de la Propriété Intellectuelle*) (copyright, related rights, trademarks, patents etc.);
- will not publish any false information about certified designations of origin (AOC, etc.) or a protected label (AB, etc.);
- will not publish any information, especially :
  - o that could incite any person to commit a crime against humanity or acts of terrorism (or promote them), acts of paedophilia, anti-Semitism, hatred, discrimination, racism, fanaticism or physical violence in relation to individuals or groups of individuals;
  - o that could harass third parties or encourage third parties to commit acts of harassment;
  - o soliciting personal data from minors;
  - o showing or advocating unlawful activities or defamatory, offensive, obscene, threatening or slanderous conduct or false or misleading information;
  - o proposing pirate or unauthorised copies of works protected by copyright or as patents or trademarks;
  - o that could incite, provoke or encourage phishing, the transmission of unsolicited emails, chain email or email blasts, unwanted instant messages or advertisements or unsolicited mail letters;
  - o that assists or encourages any criminal activity or venture or gives information or instructions on how to assist unlawful activities, invasions of privacy or the spreading and creation of computer viruses;
  - o soliciting passwords or personal data from other users for unlawful commercial purposes;
  - o distributing, reproducing, publishing or modifying, in any manner whatsoever, any item protected by copyright, registered trademarks or any property right held by third parties without their prior consent.

## 7.3. Integrity of the Information System

The Customer undertakes to take utmost care in the use of the Services, by complying with the rules of use and technical restrictions set out in the Special Terms and/or on the Alwaysdata website and/or notified by Alwaysdata. The Customer undertakes to ensure that the stability, security and quality of the Services, Alwaysdata's Infrastructure, the programs, the networks or the Bandwidth of Alwaysdata's other Customers or third parties are not affected or undermined by the Customer's use of the Services.

If Alwaysdata discovers that the Customer's use of the Service endangers or has a negative impact on the stability, security or quality of the Services, the Infrastructure, the programs, the networks the Bandwidth or the infrastructure of Alwaysdata, Alwaysdata's other Customers or third parties, Alwaysdata reserves the right to suspend or even cease the provision of the Service, including without prior notice.

7.4. The Customer undertakes to consult its/his/her Admin Area regularly and to read all information communicated by Alwaysdata. The Customer also undertakes to actively co-operate with Alwaysdata for the activation and/or smooth running of the Service.

7.5. The Customer undertakes to take out insurance covering all risks associated with the operation of its/his/her Website and the use of the Service, in particular any indirect losses that may be caused. The Customer also undertakes to inform Alwaysdata, as swiftly as possible, of any claim, complaint or legal action directly or indirectly connected to the provision of the Service and/or the website, by letter sent by registered post with acknowledgement of receipt.

7.6. The Customer shall provide and/or confirm its/his/her contact details (surname, first name, postal address, email address etc.) for each order. The Customer is under an obligation to always provide personal data that is accurate, true and genuine in all respects.

If the Customer provides information that is clearly false, inaccurate or bogus, Alwaysdata will suspend or even terminate, without prior notice, the Services ordered by the Customer causing a permanent deletion of the Data and the closure of the relevant Customer account, and in such a case, the Customer may not claim any credit note, refund or compensation for the loss sustained by the Customer or any third party.

7.7. The Customer is also informed that within the framework of the performance of the one or more Services, Alwaysdata may ask the Customer to provide it with a copy of a form of identification matching the information stated in the Customer's profile, especially if the User Credentials are lost.

If the Customer fails to produce such a document within the prescribed time, Alwaysdata will suspend or even terminate, without prior notice, the Services ordered by the Customer causing a permanent deletion of the Data and the closure of the relevant Customer account, and in such a case, the Customer may not claim any credit note, refund or compensation for the loss sustained by the Customer or any third party.

7.8. Alwaysdata may conduct targeted surveillance operations, from time to time, in relation to the use of the Services and, where applicable, prevent access to the Services, for control and security purposes and in order, primarily, to avoid any weakening of the security of the Infrastructure, the System Resources or the Servers.



## **8. Communications between the Parties - Correspondence - Enforceability of Electronic Documents**

Unless otherwise specifically provided in these Standard Terms or the Special Terms or otherwise instructed by Alwaysdata, correspondence may only be sent between the Parties electronically, through the Admin Area following the procedures supplied by Alwaysdata.

The Parties expressly agree that the information and data taken from the IT system of Alwaysdata and/or its subcontractors and/or its partners are to be treated as written proof within the meaning of Article 1366 of the French Civil Code (*Code Civil*) 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 data and emails exchanged between the Parties using their email addresses and to the usernames and passwords used by the Customer to access the Admin Area, manage it and validate Purchase Orders, etc.

The Customer expressly acknowledges and accepts that its/his/her consent, in particular, to the collection, processing, retention and archiving of its/his/her personal data, as provided for in Clause 16 hereof, may be proven by producing information and data taken from the IT system of Alwaysdata and/or its subcontractors and/or its partners.

Lastly, mails 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 Customer.

## **9. Intellectual Property Rights**

9.1. Any Software that may be made available to the Customer as part of the Service will remain the full and exclusive property of Alwaysdata and/or the respective publishers, in particular as regards the associated intellectual property rights. Accordingly, the licences granted as part of the Service may not be treated, in any circumstances whatsoever, as an assignment of the intellectual property rights in the Software made available to the Customer.

9.2. Alwaysdata hereby grants the Customer, for the duration of the Service, a non-exclusive licence to use the Software made available as part of the Services signed up for by the Customer. The Customer may only use the Software for the use of the relevant Service. Unless otherwise provided, Alwaysdata and/or the publisher concerned are deemed to retain the right to modify and correct the Software.

9.3. If the Service involves the use of external software, the terms of the licences granted by the relevant publishers will apply in addition to the terms hereof. In this respect, Alwaysdata may not grant the Customer more extensive rights than under the publisher's licence, in any circumstances whatsoever.

9.4. The Software provided as part of the Service will be delivered “as is” and without any warranty of any kind from Alwaysdata, in particular as regards the suitability of the features of the said Software for the Customer’s needs and requirements, non-interruption or its error-free nature, correction of defects, bugs etc. The Parties expressly agree that the warranty set out in Article 1641 of the French Civil Code does not apply for the Software.

9.5. Given the technical and economic developments specific to software publishing businesses, the Customer unconditionally acknowledges and accepts that Alwaysdata is not responsible for end-of-life, support or the Software upgrade policy of the relevant publisher, that Alwaysdata reserves the right to replace a piece of Software with equivalent Software (as regards the available features) for the purpose of the Service and that Alwaysdata reserves the right to update Software, in order to install a new version. None of the foregoing may be treated as a ground for the termination of the Contract and/or the relevant special terms or give rise to any refund, credit note or compensation for the Customer.

9.6. If the Software is discontinued by the relevant publisher, for any reason whatsoever (cessation of trading, instigation of collective insolvency proceedings, technical incident etc.) and may not be replaced, Alwaysdata shall inform the Customer as swiftly as possible.

9.7. The Customer undertakes not to use the Software for any purpose other than the Service, as described in the Purchase Order, on the Alwaysdata website and the corresponding Special Terms. Unless otherwise specifically provided in the corresponding special terms, the Customer undertakes not to copy, reproduce, display, adapt, modify or decompile, in any manner whatsoever, the Software and/or the corresponding documentation, if any.

9.8. The Customer’s Data hosted on the Server will remain the exclusive property of the Customer and Alwaysdata may not issue any type of challenge to this property right.

9.9. Alwaysdata warrants to the Customer that it will not access the Customer’s Data without the Customer’s prior express permission and accordingly, agrees not to in any way exploit and/or use it other than as justified by the performance hereof.

## **10. Alwaysdata’s Liability**

### **10.1. Provision of the Service**

10.1.1. Alwaysdata cannot warrant to the Customer the continuous and permanent availability of the Service. However, Alwaysdata shall use its best efforts to provide the Service, subject to periods of maintenance.

10.1.2. Alwaysdata reserves the right to interrupt the Service for maintenance and/or improvement work on the Service. The Customer will be given prior notice of these Service interruptions, whenever possible for Alwaysdata, and they must be conducted, to the extent possible, at the times causing the least disruption to the Customer’s use of the Services. However, in urgent situations, Alwaysdata reserves the right to partially or completely suspend the Service, for a reasonable time, in order to conduct any technical operation required. The Customer will not be entitled to claim any compensation for these Service interruptions.

10.1.3. If the Service is unavailable due to technical problems to be resolved by Alwaysdata, Alwaysdata shall use its best efforts to resolve the problem or problems as swiftly as possible after their detection using the supervision and monitoring tools implemented by Alwaysdata or after written notice given to Alwaysdata by the Customer, through the Admin Area only, provided in the latter case that:

- (i) The Customer describes the problems encountered as accurately as possible;
- (ii) The said problems are reproducible;
- (iii) The Customer collaborates fully with Alwaysdata;
- (iv) The said problems were not caused by the Customer's misuse of the Service and/or the Data and/or the website.

10.1.4. Alwaysdata disclaims all liability for any Service interruption and/or problems caused by:

- (i) The Customer breaching or failing to fulfil any one of its/his/her obligations under the Standard Terms or the Special Terms or the instructions given by Alwaysdata;
- (ii) The defective functioning or inappropriate use of the means of access to the Service used by the Customer and/or an inappropriate use of the Service by the Customer;
- (iii) A case of force majeure, defined as an event (a) beyond the control of the Party that suffers it, (b) which could not be reasonably foreseen when entering into the Contract and (c) the effects of which cannot be avoided by appropriate measures within the meaning of article 1218 of the (new) French Civil Code;
- (iv) Malfunction of the terminals or other communication systems used by the Customer;
- (v) The Customer's own acts or omissions.

10.1.5. Alwaysdata shall use its best efforts to ensure the continuity of the Services. However, given the complexity of hosting services and the specific circumstances in which hosting service providers work, Alwaysdata is only subject to a best efforts obligation under these Standard Terms and the Special Terms.

Accordingly, Alwaysdata may not be held liable for any lateness or problems affecting the delivery of emails or computer data, lost data, problems with access or refused access, slow connections or any other technical problems caused by circumstances and/or technical intermediaries external to Alwaysdata, and the effects of which cannot be avoided by appropriate measures within the meaning of article 1218 of the (new) French Civil Code.

Moreover, the Customer undertakes to carry out any operation requested by Alwaysdata as swiftly as required, including the reinstallation and/or reconfiguration of its/his/her service.

The Customer will be given prior notice thereof, in its/his/her Admin Area. The Customer will also be provided with general information on the Alwaysdata website and/or in its/his/her Admin Area. The Parties agree that Alwaysdata will not be responsible for carrying out any of these (re)configuration operations for the Customer and will not bear any of the costs associated with these operations.

10.1.6. If contractual breaches were to be attributed to Alwaysdata, the Customer the Customer could only claim direct, personal and certain damages suffered by the Customer, with the express exclusion of compensation for all indirect and / or immaterial damages such as, as an indication only and as a non-exhaustive list, commercial damage, loss of business and / or turnover, loss of

customers, loss of profits, loss of computer data, moral damage, image damage, etc.

**10.1.7. IT IS AN ESSENTIAL AND DETERMINATIVE CONDITION OF THESE STANDARD TERMS THAT IF ALWAYSDATA IS HELD LIABLE UNDER THESE STANDARD TERMS AND/OR UNDER ANY SPECIAL TERMS AND CONDITIONS REFERRING TO THE SAID STANDARD TERMS, THE COMPENSATION THAT ALWAYSDATA COULD BE LIABLE TO PAY CANNOT EXCEED, IN ANY CIRCUMSTANCES WHATSOEVER AND FOR ALL CAUSES OF ACTION, AN AGGREGATE CAP EQUAL TO THE AMOUNT PAID BY THE CUSTOMER TO ALWAYSDATA FOR THE MONTH IN WHICH THE EVENT OCCURRED THAT TRIGGERED ITS LIABILITY AND ONLY FOR THE SERVICE AFFECTED BY THE CONSIDERED BREACH OF CONTRACT BY ALWAYSDATA. ALL OTHER TYPES OF COMPENSATION AND/OR DAMAGES AND/OR PAYMENTS OF ANY KIND ARE THEREFORE EXPRESSLY EXCLUDED BY THE PARTIES AND THE CUSTOMER EXPRESSLY AND IRREVOCABLY AGREES TO THE FOREGOING BY ITS/HIS/HER ELECTRONIC ACCEPTANCE OF THESE STANDARD TERMS AND THE SPECIAL TERMS ASSOCIATED WITH THE ONE OR MORE SERVICES SELECTED BY THE CUSTOMER.**

10.1.8. The Parties agree that the provisions of this clause are binding on Alwaysdata and on any company that assumes control of Alwaysdata within the meaning of the provisions of Article L. 233-3 *et seq.* of the French Commercial Code and all companies to which it may transfer all or any part of the rights and/or obligations arising under the Contract.

## 10.2. Liability as a Technical Intermediary

The Customer acknowledges that it/he/she is solely and exclusively liable for the activities directly or indirectly carried out through the Service or that may be connected thereto.

Alwaysdata disclaims all liability for any dispute, complaint, claim, challenge, award or proceedings etc., of any kind whatsoever, directly or indirectly connected to the use of the Services for unlawful purposes or in breach of any one of the Customer's obligations under these Standard Terms and the Special Terms.

Accordingly, the Customer represents that it/he/she fully accepts all legal obligations arising from the ownership of its/his/her services and no claim may ever be threatened or issued against Alwaysdata in this respect, for any reason whatsoever, including in the event of a breach of the laws or regulations applicable to the Customer's services.

If the Customer fails to fulfil the obligations set out in these Standard Terms or the Special Terms, and in particular if the Customer runs any business that could incur civil and/or criminal liability, Alwaysdata will be entitled to disconnect and/or interrupt the Customer's services, with immediate effect and without any prior formal notice, and to immediately terminate the Contract, as of right, without prejudice to any damages that Alwaysdata may otherwise be entitled to claim.

The Customer undertakes to directly pay the person issuing the claim any sums that person claims from Alwaysdata. The Customer also undertakes to join, at Alwaysdata's request, any proceedings issued against Alwaysdata and to hold Alwaysdata harmless from and against any awards that may be made against it in the proceedings. Accordingly, the Customer undertakes to be personally responsible for any claims and/or proceedings, regardless of their form, purpose or nature, that may be issued against Alwaysdata, connected to the Customer's obligations under this Contract.

The Customer unconditionally agrees that in the event that Alwaysdata's liability is directly or indirectly incurred in its capacity as a technical intermediary by any person or entity whatsoever, Alwaysdata reserves the right to take any administrative and/or technical steps to allow it to protect

ALWAYSDATA SARL - 91 rue du Faubourg Saint Honoré - 75008 Paris - France

A French *société à responsabilité limitée* (private limited company) with a share capital of €200,000, Paris Trade and Companies Register No. 492 893 490 - French Activity Code (*Code APE*): 6311Z - VAT No: FR 66493893490

its interests and/or fulfil its obligations.

### 10.3. Exclusion of Liability

Alwaysdata cannot guarantee the availability of the Customer's Website and/or access to the Customer's Data from the Server in the following situations:

- in the event of a defective development of the Customer's Website (miscoded website, presence of critical or non-critical errors, etc.);
- in the event that the Customer exceeds the maximum storage space made available to the Customer on the Server (as stated in the Purchase Order).

Alwaysdata may not be held liable for any minor problem affecting the use of the Software made available to the Customer, as a result of which:

- the Customer's Data hosted on the Server is not backed up for more than 24 hours, if this failure does not cause or has not caused the Customer to sustain any direct loss;
- non-critical errors occur in the Admin Area, if the hosting of the Customer's Data on the Server and the remote access to this Data has remained or remain possible despite these errors.

## 11. Technical Provisions

The Customer is informed that Alwaysdata will not provide it/him/her with any devices and/or equipment.

The Customer acknowledges and accepts that it/he/she will not be granted any access to any physical server, computer or Infrastructure etc. at the Alwaysdata's data centre or those hosted at Alwaysdata's subcontractors or partner companies and that the latter remain the full and exclusive property of Alwaysdata or the said subcontractors or partner companies.

The Customer acknowledges and accepts that it/he/she may not have recourse to (and/or use) DNS servers and, more generally, configurations and/or IT systems other than those supplied by Alwaysdata without incurring its/his/her liability. In such a case, Alwaysdata may not have the technical resources to effectively repair any failure reported on the relevant server.

In such circumstances, Alwaysdata disclaims all liability for any downtime of the Customer's Website and/or if the Customer is unable to access its/his/her Data.

## 12. Suspension - Termination - Expiry

12.1. Unless otherwise provided in these Standard Terms or the relevant Special Terms, if the Customer fails to fulfil any one of its/his/her obligations, Alwaysdata reserves the right to suspend the Service, by giving a period of prior notice that is reasonable in the relevant circumstances, until the Customer has fulfilled its/his/her obligations in full.

12.2. If the Customer fails to pay for an ordered Service, including cases in which an online payment is cancelled or refused, Alwaysdata shall inform the Customer of the incident within 30 days following the date on which the non-payment was discovered, inviting the Customer to make

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the payment as swiftly as possible. Alwaysdata reserves the right to suspend the Service for an additional period of 30 days until the price has been paid in full. If the Customer fails to pay by the end of this additional period, Alwaysdata reserves the right to terminate this Contract, as of right, with the consequences set out in Clause 13 (Backup and Deletion of the Customer's Data -Warning).

12.3. The Service will be automatically suspended if the Customer deliberately declares inaccurate information or information from doubtful sources, if the Customer deliberately fails to update the information supplied to Alwaysdata, in particular the User Credentials or if the Customer fails to reply to Alwaysdata's requests, in particular in relation to the accuracy of the information supplied by the Customer.

12.4. Unless otherwise specifically provided, if a Party fails to fulfil its/his/her obligations, the other Party may terminate this Contract by letter sent by registered post with acknowledgement of receipt, fifteen (15) days after formal notice with which the defaulting Party fails to comply. In such a case, the Contract will be terminated, without prejudice to any damages that may be claimed from the defaulting Party and the Customer may not claim any refund or compensation for the loss sustained by the Customer or any third party.

12.5. If the Customer uses the Service in breach of the terms of Clauses 7.1 (Compliance of the Customer's Website), 7.2 (Editorial Control), 7.3 (Integrity of the Information System) or 9 (Intellectual Property Rights) hereof, the Customer will be deemed to be in serious breach of its/his/her contractual obligations, authorising Alwaysdata, at its own discretion, to:

- i) Suspend the Service and/or access to the Admin Area at any time - merely after sending notice by Email - until the Customer complies with its/his/her obligations, and/or,
- ii) Give the Customer formal notice to comply with its/his/her obligations, and/or,
- iii) Terminate this Contract, as of right, without prejudice to any damages for direct and/or indirect losses that Alwaysdata may claim.

Alwaysdata also reserves the right to sue the Customer for compensation for the loss caused to Alwaysdata by the Customer.

The Customer will not be entitled to any compensation for any suspension, termination or deactivation of the Service on the ground of the Customer's breach, in particular in the circumstances set out in this clause, and will not be entitled to any refund.

### **13. Backup and Deletion of the Customer's Data - Warning**

#### **13.1. Backup of the Customer's Data**

Alwaysdata recommends that the Customer back up the Data hosted on Alwaysdata's Servers as often as possible.

To this end, the Customer may subscribe to the remote backup offer to third-party servers offered by Alwaysdata, in particular under the financial conditions in force on the Alwaysdata website on the date of the subscription.

Once the Data has been transferred to the remote backup server, the conditions and procedures for storing this Data will be exclusively governed by the agreement concluded between the Customer

and the manager of said remote server, without the liability of Alwaysdata being able to be sought in no way on this count.

### 13.2. Deletion of the Customer's Data

**WARNING: IF THIS CONTRACT IS TERMINATED FOR ANY REASON WHATSOEVER OR EXPIRES, THE CUSTOMER'S DATA WILL BE PERMANENTLY DELETED FROM ALWAYSDATA'S SERVERS. THE CUSTOMER WILL BE INFORMED BY EMAIL, AT FREQUENT INTERVALS, OF THE DATE OF THE PERMANENT DELETION OF THE DATA FROM THE SERVER.**

**THE CUSTOMER SHALL BE RESPONSIBLE, WITHIN THE PRESCRIBED TIME - NO LESS THAN 24 HOURS BEFORE THE DEADLINE, FOR RETRIEVING ALL OF ITS/HIS/HER WEBSITE AND DATA DIRECTLY. FAILING THIS, ALWAYSDATA WILL PERMANENTLY DELETE THESE ITEMS WITHOUT INCURRING ITS LIABILITY, IN ANY MANNER WHATSOEVER.**

## 14. Cancellation Right - Waiver - Absence

Pursuant to Article L. 121-21 of the French Consumer Code, Consumer Customers are informed that they have a period of 14 (fourteen) days, commencing on the date on which they register on the Alwaysdata website, in which to exercise their cancellation right, without having to give any reasons and without any charge.

To this end, Consumer Customers must inform Alwaysdata of their decision to cancel by filling in the cancellation form and then sending it to Alwaysdata before the end of the period of fourteen (14) days, or by sending it any other clear declaration expressing the Customer's decision to cancel within the same period.

The cancellation form or the clear declaration of cancellation must be sent to the following address:

**ALWAYSDATA**  
Service des Relations Clients  
91 rue du Faubourg Saint-Honoré – 75008 Paris  
Email: [contact@alwaysdata.com](mailto:contact@alwaysdata.com)

Where necessary, Consumer Customers shall return or send back any materials that may have been received following registration, to the postal address set out above, without undue delay and no later than fourteen (14) days after the communication of the Customer's decision to exercise the right to cancel.

Alwaysdata shall refund to the Consumer Customer the fees paid for his/her registration within the statutory maximum period of fourteen (14) days, commencing on the date of receipt of the decision to cancel notified by the Consumer Customer.

Pursuant to Article L. 121-28 of the French Consumer Code and to the extent that the contractual relationship falls within the scope of the provision of an electronic Service, Consumer Customers will have no right to cancel if they start using the Service before the end of the period of fourteen (14) days following registration.

Accordingly, the Consumer Customer expressly waives his/her right to cancel in such a case, by the electronic acceptance of these Standard Terms and the Special Terms associated with the Services selected by the Consumer Customer.

## **15. Force majeure**

Any event beyond a Party's control, that the said Party could not reasonably be expected to have made provision for, will constitute a force majeure event and will accordingly suspend the Parties' obligations. The Parties contractually agree between them that any damage originating from or caused by the following will be treated as a force majeure event, without limitation: a strike (telecommunications operators, registries, NIC and other authorities etc.), power cuts (for example, electricity cuts), a failure in the telecommunications network used by Alwaysdata and/or any networks replacing it, a civil or international war, riots or civil uprisings, attacks, volcanic eruptions, tsunamis, storm, earthquake, loss of Internet connection, etc.

However, if the suspension lasts for more than one (1) month, each Party reserves the right to terminate these Standard Terms, as of right, without any entitlement to compensation and without any prior notice, after sending notice of termination by registered post with acknowledgement of receipt.

## **16. GDPR - Personal Data Protection**

### **16.1. Consent to the Collection and Processing of Personal Data**

By signing these Standard Terms, the Customer agrees to the collection and processing of the Customer's personal data for the purposes of the Service signed up for under this Contract.

The Customer authorises Alwaysdata to process that data in accordance with applicable statutory, regulatory and EU provisions, in particular the GDPR and the non-conflicting provisions of the French Data Protection Act.

For more information, please see our [Privacy Policy](#).

Pursuant to Articles 4, 6 and 7 of the GDPR, the Special Conditions applicable to the Customer Area are set out in Annex 1 of these Term of uses.

### **16.2. Liability of the Controller**

In accordance with article 24 of the GDPR, each Party is treated as the Data Controller whenever it determines the purposes and means of the processing.

Accordingly, taking into account the nature, scope, context and purposes of the processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall implement appropriate technical and organisational measures within the meaning of Article 24 of the GDPR, to ensure and to be able to demonstrate that its processing is performed in accordance with the GDPR. Those measures shall be reviewed and updated where necessary.

Where proportionate in relation to processing activities, the measures referred to in the previous



paragraph shall include the implementation of appropriate data protection policies by the Data Controller.

Adherence to approved codes of conduct as referred to in Article 40 of the GDPR or approved certification mechanisms as referred to in Article 42 of the GDPR may be used as an element by which to demonstrate compliance with the obligations of the Data Controller.

### 16.3. Data Security

Each Party shall take all steps required under Article 32 of the GDPR (“Security of Processing”) to protect the security and confidentiality of the Personal Data it processes and, in particular, shall implement technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

Those technical and organisational measures may include inter alia as appropriate:

- a. The pseudonymisation and encryption of personal data;
- b. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Adherence to an approved code of conduct as referred to in Article 40 of the GDPR or an approved certification mechanism as referred to in Article 42 of the GDPR may be used as an element by which to demonstrate compliance with the requirements set out in this Clause 16.3.

### 16.4. Non-Transfer of Data Principle

Without prejudice to the provisions of Clause 16.5 hereof, Alwaysdata will not disclose or communicate any personal data to third parties without the Customer’s explicit consent. However, Alwaysdata may be released from this requirement if it is required to make such a disclosure or communication by law or if it is convinced, in utmost good faith, that such an action is required.

### 16.5. Limited transfer, for the requirements of the Service

The Customer agrees that Alwaysdata may transfer its/his/her personal data, for the purposes of the performance of the Service, to Alwaysdata’s partners located within the European Union and to the call centre used by Alwaysdata to receive telephone calls from Customers, also located within the European Union.

### 16.6. Rights of the data subjects

Pursuant to Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the “**GDPR**”) and the provisions (other than those conflicting with the said Regulation) of French Data Protection Act No. 78-17 of 6 January 1978 as subsequently amended

(hereinafter the “**French Data Protection Act**”), the Customer has the right to object to the collection and processing of the Customer’s personal data, a right to request access to that data, the right to request the rectification or erasure of it (right to be forgotten), the right not to be subject to a decision based solely on automated processing, including profiling, the right to request a restriction of processing for the processing of the Customer’s personal data, the right to obtain information on the persons to whom the data controller has transferred the Customer’s personal data, and the right to data portability, as those rights are described in Articles 15 to 22 of the GDPR. The Customer may exercise those rights by sending a request to [dpo@alwaysdata.com](mailto:dpo@alwaysdata.com) with the required supporting documents, in particular proof of the Customer’s identity.

## **17. Subcontracting clauses**

### **17.1. Subcontracting between Alwaysdata and Third Parties**

The Customer expressly authorises Alwaysdata to subcontract all or any part of the services set out herein to any third party of its choice.

If a subcontractor is used, a check box will be inserted for the subcontracted services and the corresponding standard terms of service applied by the subcontractor, which may be consulted online or downloaded by the Customer.

The Customer will be deemed to have accepted the subcontracting and the subcontractor’s general terms of service by checking the relevant box during the registration process for the Service on Alwaysdata’s website, and the link between the checking of that box and the acceptance of the subcontracting and the corresponding general terms of service is presumed until proven otherwise.

Alwaysdata must ensure that the selected subcontractor (in its capacity as the data processor) provides the same sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the GDPR.

If the subcontractor (in its capacity as the data processor) selected by Alwaysdata fails to fulfil its Data protection obligations, Alwaysdata shall remain fully liable to the Customer, as the Data Controller, for the data processor’s performance of its obligations.

### **17.2. Subcontracting between the Customer and third parties**

If the Customer allows third parties to benefit from all or part of the Services, the provisions of these Standard Terms and the Special Terms applicable to the relevant Service will be fully binding on and enforceable against those third parties, but they will not be entitled to rely on them against Alwaysdata.

### **17.3. Subcontracting between the Customer (in its/his/her capacity as the Data Controller) and Alwaysdata (in its capacity as the Data Processor)**

Pursuant to Clause 17.3 (Subcontracting between the Customer and Alwaysdata), the Customer is the Data Controller and Alwaysdata is the Data Processor for all Personal Data processed by Alwaysdata on behalf of the Customer under the terms of this Contract.

### 17.3.1. Purpose

The purpose of Clause 17.3 and its various sub-sections is to set out the terms and conditions on which Alwaysdata (acting as the Customer's Data Processor) undertakes to carry out, on behalf of the Customer (acting as the Data Controller), the Personal Data processing operations described below.

Within the framework of their contractual relationship, the Parties undertake to comply with the regulations in force applicable to the processing of Personal Data, in particular the GDPR which is mandatory from 25 May 2018 onwards.

### 17.3.2. Processing on Instructions

Alwaysdata, and any person acting on the authority of Alwaysdata who has access to the Customer's Personal Data, undertakes to process the Customer's Personal Data only on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country or an international organisation, unless Alwaysdata is required to do so by Union or Member State law to which it is subject; in such a case, Alwaysdata shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

Alwaysdata shall immediately inform the Customer if, in Alwaysdata's opinion, an instruction given by the Customer infringes EU Legislation on the protection of Personal Data.

### 17.3.3. Description of the subcontracted processing

Alwaysdata is authorised to process, on behalf of the Customer, the Personal Data required for the provision of the one or more services jointly determined by the Parties, including the duration of the processing, the nature and purpose of the processing, the type of Personal Data and categories of data subjects and the obligations and rights of the Customer in its/his/her capacity as the Data Controller.

### 17.3.4. Alwaysdata's Obligations, as the Data Processor, to the Customer, as the Data Controller

In its capacity as the Data Processor for the Data covered by the subcontracting, Alwaysdata undertakes to:

- A. Process the relevant Data solely for the one or more purposes covered by the subcontracting only.
- B. Process the relevant Data in accordance with documented instructions from the Customer, as the Data Controller.
- C. Protect the confidentiality of the Personal Data processed under the terms of this contract.
- D. Ensure that persons authorised to process Personal Data under the terms of this contract:
  - a. Have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

- b. Receive the required Personal Data protection training.
- E. Take into account, as regards its tools, products, applications or services, the principles of data protection by design and by default.
- F. Data Subjects' Right to Information

The Customer, as the Data Controller, is responsible for the provision of information to data subjects affected by the processing operations, when the data is collected.

#### G. Exercise of Data Subject Rights

Where possible, Alwaysdata shall, in its capacity as the Data Processor, assist the Customer for the fulfilment of its obligation as the Data Controller to respond to requests for exercising data subjects' rights: right of access, right to rectification, to erasure and to object, right to a restriction of processing, right to data portability and right not to be subject to automated, individual decision-making (including profiling).

Whenever data subjects submit requests for exercising their rights to Alwaysdata, as the Data Processor, it shall forward those requests by email on receipt, to the Customer's contact email address as provided in the Customer's profile.

#### H. Notification of Personal Data Breaches

In its capacity as the Data Processor, Alwaysdata shall notify the Customer, as the Data Controller, without undue delay after becoming aware of a personal data breach in accordance with Article 34 of the GDPR, and by email to the Customer's contact email address as provided in the Customer's profile.

That notification must include all relevant documentation to allow the Customer, as the Data Controller, to notify that breach, where necessary, to the competent supervisory authority (the French Data Protection Agency (CNIL) for France or its European equivalents for the other Member States).

#### I. Assistance by Alwaysdata, as the Data Processor, with the Customer's compliance with its obligations as the Data Controller

In its capacity as the Data Processor, Alwaysdata shall assist the Customer, as the Data Controller, with the carrying out of data protection impact assessments and the prior consultation of the supervisory authority.

Alwaysdata shall perform the services provided for in this Clause 22.3.4(I) on terms and conditions, including financial terms, and within the times agreed in advance between the Customer and Alwaysdata.

#### J. Security Measures

To the extent that Article 32 of the GDPR provides that both the Data Controller and the Data Processor are responsible for implementing security measures, each Party undertakes,

as regards the Personal Data entrusted to it, to implement technical and organisational security measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- a. The pseudonymisation and encryption of personal data;
- b. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Adherence to an approved code of conduct as referred to in Article 40 of the GDPR or an approved certification mechanism as referred to in Article 42 of the GDPR may be used as an element by which to demonstrate compliance with the security requirements set out in Article 32(1) of the GDPR as set out above.

#### K. Deletion of Data

At the end of the Personal Data processing service, the Data will be treated in accordance with Clause 13.2 hereof (Deletion of the Customer's Data).

#### L. Data Protection Officer

In its capacity as the Data Processor, Alwaysdata shall provide the Customer, as the Data Controller, with the name and contact details of its Data Protection Officer (hereinafter the "DPO") appointed in accordance with Article 37 of the GDPR, on request.

#### M. Records of Categories of Processing Activities

In its capacity as the Data Processor, Alwaysdata represents that it produces written records of all categories of processing activities carried out on behalf of the Customer, as the Data Controller, including:

- a. The name and contact details of the Customer, as the Data Controller, on whose behalf Alwaysdata acts as the Data Processor, and any sub-processors and, where applicable, the Data Protection Officer;
- b. The categories of processing carried out on behalf of the Customer, as the Data Controller;
- c. Where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1) of the GDPR, the documentation of suitable safeguards;
- d. Where possible, a general description of the technical and organisational security measures, including inter alia as appropriate:
  - The pseudonymisation and encryption of personal data;
  - The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - The ability to restore the availability and access to personal data in a timely

- manner in the event of a physical or technical incident;
- A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

#### N. Documentation

In its capacity as the Data Processor, Alwaysdata shall make the necessary documentation available to the Customer, as the Data Controller, to demonstrate compliance with all its obligations and allow for and contribute to audits, including inspections, conducted by the Customer, as the Data Controller or another auditor mandated by the Data Controller.

#### 17.3.5. Customer's Obligations, as the Data Controller, to Alwaysdata, as the Data Processor

In its capacity as the Data Controller, the Customer undertakes to:

- A. Provide Alwaysdata, as the Data Processor, with the information and data referred to in Clause 22.3.3 hereof.
- B. Document in writing any instructions relating to the processing of Data by Alwaysdata, as the Data Processor.
- C. Ensure that Alwaysdata, as the Data Processor, complies with the obligations set out in the GDPR, both prior to and during the entire period of processing.
- D. Supervise the processing, including by conducting audits and inspections of Alwaysdata, as the Data Processor.

### 18. Amendments to the Standard Terms and/or the Special Terms

The Customer is informed that these Standard Terms and the provisions of the Special Terms may be amended at any time. Alwaysdata shall inform the Customer of any amendment to these Standard Terms or the Special Terms at least one (1) month prior to the effective date of the amendment. Any Customer refusing these amendments may either terminate the Service within no more than one (1) month of the notice given or ask Alwaysdata to continue to apply the former standard terms of service until the expiry of the Customer's contract. Thereafter, the Customer will be deemed to have accepted the amendments.

Alwaysdata reserves the right to change the characteristics of the Service at any time, without effecting material changes. In such a case, Alwaysdata shall inform the Customers of these changes fifteen (15) days prior to the effective date thereof.

### 19. Entire Agreement

The provisions of these Standard Terms and the Special Terms concerned express the entire agreement reached between the Customer and Alwaysdata. They prevail over any proposal or exchange of letters before the conclusion hereof and also over any other provisions set out in the documents exchanged previously between the Parties in relation to the subject matter of the Standard Terms and the Special Terms concerned.

## **20. Severability**

If one or more provisions of these Standard Terms are considered to be invalid or held invalid under a law, regulations or following a final judgment issued by an appropriate court, the other provisions of these Standard Terms will remain in full force and effect.

Where applicable, Alwaysdata undertakes to immediately delete and replace the said clause by a legally valid clause.

## **21. Headings**

If interpretation problems are encountered between the headings and chapters of any given clause and any one of the clauses of these Standard Terms, the headings should be disregarded.

## **22. No Waiver**

If a Party fails to enforce a provision of these Standard Terms or the Special Terms on a temporary or permanent basis, this may not be treated as a waiver of the rights held by the said Party.

## **23. Business References**

The Customer expressly authorises Alwaysdata to refer to the Customer and/or the corresponding website as a business and/or advertising reference. Alwaysdata may refer to the Services provided to the Customer in connection with any advertising or events and at specialist professional conferences and in specialist professional publications, and also in its sales documents and/or its brochure.

## **24. Language of the Contract**

The language of these Standard Terms or the Special Terms is French and the French version will prevail over any other versions translated into another language.

## **25. Jurisdiction - Governing Law**

French law is the only law applicable to these Standard Terms and the additional Special Terms.

In the event of a dispute concerning these Standard Terms or the additional Special Terms, the Parties shall first seek an amicable solution before any legal action.

Therefore, the Parties will make all necessary efforts to ensure that this amicable settlement is reached within three (03) months of the notification of the existence of the dispute by the most diligent Party.

IF THE PARTIES DO NOT FIND AN AMICABLE SETTLEMENT WITHIN THIS THREE (03) MONTH PERIOD, THE MOST DILIGENT PARTY SHALL SUBMIT THE DISPUTE TO THE COMPETENT COURTS OF PARIS, NOTWITHSTANDING PLURALITY OF DEFENDANTS AND EXPERTISE.

## ANNEX 1 CUSTOMER'S AREA ON ALWAYSDATA'S WEBSITE

ALWAYSDATA (hereinafter "**ALWAYSDATA**") has set up a customer area (hereinafter "**Customer Area**" or "**Admin**") on its [website](#) (hereinafter the "**Website**") whose access, by login and password (hereinafter the "**Identifier Codes**"), is reserved for its customers (hereinafter the "**Customers**") according to the [standard terms of service](#) (hereinafter the "**Standard Terms**") defined by ALWAYSDATA.

Access to the Customer Area requires the Customer to accept the Standard Terms without reservation when he first logs in. These Standard Terms then remain available on the Website, but also on request.

In addition, the management of the Admin account requires the processing of personal data by ALWAYSDATA. However, according to the European general data protection regulation 2016/679 of 27 April 2016 (known as "**GDPR**"), the consent by which the data subject accepts that his personal data be processed **must be freely given, specific, informed and unambiguous**.

Therefore, we have defined and formalized in this document the special terms ensuring the validity of the processing of personal data implemented in the Customer Area (hereinafter the "**Special Terms - Personal Data of the Customer Area**" or the "**ST-Personal Data**").

The ST-Personal Data supplement the Standard Terms with which they are one and form an indivisible whole.

### 1. PURPOSE OF DATA PROCESSING

#### a. The purpose of processing is to :

- Allow Customers to access the Services offered by ALWAYSDATA and manage them via the Admin.
- Manage Customers' requests and interact with ALWAYSDATA.
- Facilitate the updating of their data by Customers.
- Provide a secure channel of exchanges.
- Measure Admin usage and Customers' satisfaction (statistics).

#### b. Legal basis

Article 6-1 a/, b/ ou f/ of the GDPR, namely :

- The Customer's consent for the processing of his/her personal data for one or more specific purposes, in this case for the management of the Customer Area.
- Processing is necessary for the performance of a contract to which the Customer is party or in order to take steps at the request of the Customer prior to entering into a contract.
- Processing is necessary for the purposes of the legitimate interests pursued by ALWAYSDATA.



## 2. DATA PROCESSED

### a. Categories of processed data

Identification data: Surname, first name, email address, password, telephone number (landline/mobile), physical address with postal code, city and country, origin of the relationship (or how the Customer knew ALWAYSDATA), account name allowing ALWAYSDATA to determine in particular the address of the subdomain assigned to the Customer (For example, if the name is superman, the associated subdomain will be <http://superman.alwaysdata.net>), internal processing code allowing the identification of the Customer, copy of an identity document (kept for example for the purpose of proof in the context of the exercise of legal rights provided for by the GDPR or to meet a legal obligation), promo code.

Economic and financial information: Means of payment used by the Customer (bank details, bank details, cheques, bank cards, etc.), it being specified that online financial transactions are subcontracted to an online payment service provider.

Connection data: IP address, logs, etc.

### b. Data origin

The processed data comes exclusively from the Customers; no data comes from third parties.

### c. Mandatory or optional nature of data collection

The creation of an Admin account is mandatory to allow Customers to access the Services offered by ALWAYSDATA.

### d. Automated decision-making

The processing does not provide for [automated decision-making](#) (article 22 of the GDPR).

## 3. DATA SUBJECTS

- Customers.
- ALWAYSDATA'S EMPLOYEES.

## 4. RECIPIENTS OF THE DATA

### a. Categories of recipients

Recipients of all or part of the data are :

- The Customers concerned ;
- ALWAYSDATA's internal departments that process data (Sales and Billing Department) ;
- ALWAYSDATA's institutional or business Partners, namely:
  - o Public bodies and administrations legally entitled to receive the data;
  - o Financial institutions involved in the management of ALWAYSDATA and the Customer's accounts;

- o Partners for the needs of the service;
- o ALWAYSDATA's subcontractors.

## **b. Transfers of data outside the EU**

No data transfer outside the European Union is carried out.

## **5. DATA RETENTION PERIOD**

### Identification data :

- 5 years after the end of the commercial relationship, unless authorized by the Customer or specific duration imposed by a legal or regulatory provision;
- In the event of termination of the contract for any reason whatsoever, the account is deleted with all the data it contains, after a series of express and explicit notifications and with increasingly close frequencies until the final deletion of the account and the data relating thereto;
- Data collected via Cookies are deleted after 13 months.

### Economic and financial information

- Depending on the Customer's choice, he/she can freely decide to make punctual payments (and therefore without keeping his/her bank details) or on the contrary,
- To register his/her bank details for subsequent direct debits until their revocation or until the expiry of the means of payment.

### Connection data :

- Unless specific duration imposed by a legal or regulatory provision, the connection data are kept for a maximum of one year after the last connection (or more precisely "from the day of registration") in accordance with Article R10-13 III of the French "Code des Postes et des Communications Electroniques" (CPCE) taken pursuant to III of Article L. 34-1 of the same Code.

## **6. SECURITY**

The security measures are summarized in the document called "Technical and organizational measures" set up by ALWAYSDATA, including in particular:

- Traceability measures;
- Software protection measures;
- Data backup;
- Users access control.

## **7. YOUR RIGHTS OVER YOUR DATA**

You can access and obtain a copy of your data, object to the processing of these data, have them rectified or have them deleted. You also have the right to restrict the processing of your data.

### **a. Exercising your rights**

You can exercise one or more of your rights by sending us (at your choice):

- An e-mail to the following address : [dpo@alwaysdata.com](mailto:dpo@alwaysdata.com) ;
- A postal mail to the following address :

**ALWAYSDATA**

For the attention of the Data Protection Officer (DPO)  
91 rue du Faubourg Saint-Honoré – 75008 Paris

## **b. Complaint to the CNIL**

If you consider, after contacting us, that your rights over your personal data are not respected, you can send a complaint to the Commission Nationale de l'Informatique et des Libertés (CNIL) via the contact details you can find on [its website](#) by [clicking here](#).

## **8. COOKIES AND OTHER TRACKING DEVICES**

The Customer is informed that when he uses the Customer Area, cookies may be automatically installed on his computer or terminal equipment. These cookies are used in particular to track and measure the Customer's activity in order to improve his/her Admin experience.

In accordance with the GDPR and the amended Data Protection Act (known as Loi informatique et Libertés modifiée), ALWAYSDATA has set up a [Cookies' Policy](#). The Customer can consult this Cookies' Policy by [clicking here](#).

However, in accordance with the exemptions provided for in Article 82 of the amended Data Protection Act (known as Loi informatique et Libertés modifiée), there is no need to set up a Cookies and other tracking devices management form for access to a closed space such as the Customer Area.

## **9. MODIFICATION OF THESE SPECIAL TERMS – PERSONAL DATA**

In the event of legislative, regulatory or case-law changes, guidelines endorsed by the European Data Protection Board (EDPB), CNIL recommendations, customs or others, ALWAYSDATA may revise or update these ST-Personal Data at any time and without notice, the changes being valid only for the future.