

# ALWAYSDATA

## SPECIAL TERMS - SHARED HOSTING SERVICE

(last updated: 1 March 2016)

PLEASE READ THESE SPECIAL TERMS - HOSTING SERVICE ON A SHARED SERVER CAREFULLY BEFORE USING THE SERVICES PROPOSED BY ALWAYSDATA (THE “SHARED SPECIAL TERMS”).

THESE SPECIAL TERMS SET OUT THE TERMS AND LEGAL OBLIGATIONS THAT APPLY TO ANY PERSON SIGNING UP FOR ACCESS TO HOSTING SPACE ON A SHARED SERVER (AGAINST PAYMENT OR A FREE PLAN) ON [WWW.ALWAYSDATA.COM](http://WWW.ALWAYSDATA.COM) PROPOSED BY ALWAYSDATA.

THEY SUPPLEMENT THE STANDARD TERMS OF SERVICE (THE “STANDARD TERMS”) ALSO AVAILABLE ON THE WEBSITE.

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

The purpose of these Special Terms for Hosting Services on a Shared Server (hereinafter the “Shared Special Terms”) is to set out the terms and conditions on which Alwaysdata, a French *société à responsabilité limitée* (private limited company) with a share capital of €5,000, registered in Paris Trade and Companies Register under number 492 893 490, whose registered office is located at 62 Rue Tiquetonne, 75002 Paris, known under its trading name “Alwaysdata” (hereinafter referred to as “Alwaysdata”), provides the following services to the Customer:

- rental of a partition of a Shared Server for hosting;
- hosting of the Customer’s Data on one of its Shared Servers.

The Customer unconditionally accepts the above Services without any restrictions.

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

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

### 2. **Description of the Services**

#### 2.1. **Hosting on a Shared Server**

2.1.1. The Shared Hosting Service includes the installation of a Data storage space located on a Shared Server owned by Alwaysdata and the provision of access to the Customer and the

Customer's access to the said storage space using the Internet network via the provision of Bandwidth.

2.1.2. The Customer is informed that Alwaysdata will manage and administer the Shared Server. However, the Customer remains fully responsible for the Data hosted by the Customer on the Shared Server.

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

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

2.1.3. Alwaysdata shall make hardware and software available to the Customer, as stated in the Order Form. The Customer shall ensure that the hardware and software selected are suitable for its/his/her needs. If they prove unsuitable, the Customer will be responsible for contacting Alwaysdata in a timely manner, in order to sign up for another Service and/or another Server with the required characteristics, at the applicable fee and within the limits of the Services offered by Alwaysdata at the time of the request.

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

## 2.2. Telephone-based support (option)

If the Customer signs up for the telephone-based support service, Alwaysdata will provide the representatives named by the Customer with the technical support required for the use of the Service along with all relevant information connected to the use of the Service. This support will be provided by telephone and also via electronic correspondence, from Monday to Friday, 10 a.m. to 6 p.m. (excluding public holidays in France).

## 2.3. Uptime guarantees

### 2.3.1 During the set-up phase for the Customer's partition on the Shared Server

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

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

This period depends on the availability of the one or more Servers at the time of registration and generally lasts for less than 72 hours.

### 2.3.2 After the Server installation and set-up phase

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

This uptime rate does not apply for the other services, in particular FTP, SSH, WebDAV, Webmail or access to the administration console. Maintenance operations are excluded from uptime calculations, for up to 2 hours per month. These maintenance operations will be carried out, where possible, at night (French time).

If the downtime limit is exceeded (more than 0.3% in one single month), Alwaysdata shall refund 10% (TEN PER CENT) of the monthly fee paid by the Customer for each additional hour of downtime recorded (capped at 100% of this monthly fee).

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

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

The following are excluded when calculating downtime:

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

### 2.3.3 Guaranteed Response Time/Guaranteed Resolution Time

In the event of a complete loss of access to the Shared Server, Alwaysdata undertakes to start work on the relevant Server within 60 minutes following the registration of the issue.

Alwaysdata undertakes to restore the Services within 4 hours (7 days a week, 24 hours a day) of the registration of the report.

This guarantee does not apply during the initialisation of the partition on the Customer’s Shared Server or during the 2-day period following a migration of the Server.

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

### **3. Designation of the Shared Server**

3.1. The Service includes the provision of Data storage space on a Shared Server, with the allotted characteristics set out in the Order Form, for the duration of the subscription for the Service. The Server shall remain the property of Alwaysdata in all cases. The Customer is informed that it/he/she is not permitted to have any physical access to the Server, at any time.

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

Alwaysdata undertakes to use its best efforts to give the Customer prior notice thereof. The Customer is informed that where necessary, Alwaysdata is permitted to migrate the Customer's Service to a new Server other than the previously assigned Server. Alwaysdata will be responsible for the technical reconfiguration and complete reinstallation of the Server.

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

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

The Parties agree that Alwaysdata will not be responsible for any of the operations described above for the Customer and will not bear any costs incurred in relation to this reinstallation of the Customer's Services and Data on the Server.

### **4. Customer's Representations and Liability**

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

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

4.3. The Customer is informed that Alwaysdata may at any time demand a copy of a form of identification for the Customer and this is expressly and unconditionally accepted by the Customer.

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

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If the Customer fails to supply this document, the contract may be terminated, as of right, on the sole ground of the Customer's breach, and the Service signed up for by the Customer may also be permanently deleted, with no entitlement for the Customer to claim any refund, credit note or compensation.

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

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

4.6. The Customer is informed that Alwaysdata will back up the Customer's Data (Website, emails, database etc.), at the intervals stated in the Purchase Order. Alwaysdata will retain each backup copy for the period stated in the Purchase Order. Thereafter, the backup will be permanently deleted.

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

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

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

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

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

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

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

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

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

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

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

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

## **5. Alwaysdata's Obligations**

Alwaysdata undertakes to perform the Services ordered from it in a professional manner and to take the due care and attention required for the provision of a top-quality service in accordance with standard industry practice and best practice.

Alwaysdata undertakes to adopt all security and Data backup measures in accordance with standard industry practice and best practice, to provide access to the Server 24 hours a day, on every single day of the year, to respond quickly in the event of an incident and to ensure the continued optimal quality of the tools made available to the Customer.

In this respect and given the special technical features of the hosting of data online, Alwaysdata's obligations to the Customer will be best efforts obligations only.

## **6. Financial Terms and Conditions**

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

The fixed fee payable for the Services is due immediately.

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

The Customer may consult the prices proposed for the Service signed up for in the Order Form and on [www.alwaysdata.com](http://www.alwaysdata.com).

## **7. Term**

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

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

- Monthly fixed fee: Initialisation phase + one (1) month.
- Annual fixed fee: Initialisation phase + one year.

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

## **8. Traffic and Bandwidth**

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

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

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

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

If the Customer fails to pay the corresponding invoice or if the Customer refuses the increased volume of Traffic thus allotted, Alwaysdata shall suspend the Service, as of right, whenever the volume of Traffic allotted is exceeded. Alwaysdata may not be held liable for any Service

downtime caused by this suspension. If less than the Customer's monthly volume of Traffic is consumed, the unused fraction will not be carried over.

## **9. Technical Restrictions**

9.1. Various Technical Restrictions apply to the use of the Service, as stated on the Alwaysdata website and/or in the Customer Area and/or in an email, and the Customer represents that it/he/she is aware thereof and undertakes to comply, at all times, with the terms thereof and any updates, which the Customer agrees to consult on a regular basis. Accordingly, the Customer will be responsible for taking all appropriate steps to ensure compliance with the Technical Restrictions.

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



## 10. **Free Plans**

Alwaysdata may offer its Customers a free version of the data hosting services for the period of time and on the terms and conditions set out on the Alwaysdata website and/or in the Admin Area (hereinafter referred to as the “Free Plan”). Access to this data hosting service is free for the Customer but limited in terms of storage capacity and processing power compared to the full version of the Service. The technical characteristics of the Free Plan are described on [www.alwaysdata.com](http://www.alwaysdata.com).

The Customer may decide to sign up or not to sign up for the full version of the trial Service at any time. If the Customer decides to sign up, the Customer may order the Service by following the arrangements notified by Alwaysdata.

The Customer is responsible, where necessary, for backing up the Customer’s Data associated with the Free Plan, which will cease to be accessible and retrievable after the contractual expiry date. By signing up for the Service, including the free version of the Service, in accordance with the arrangements notified by Alwaysdata, the Customer is deemed to fully accept the terms of these Special Terms and the Standard Terms available on [www.alwaysdata.com](http://www.alwaysdata.com).