



## GENERAL TERMS AND CONDITIONS OF USE OF THE INFORMATION PORTAL AND LEFAC SERVICES

### PREAMBLE

TBS is the author and producer of an information portal, LeFAC, containing information about members of the advertising market.

This portal therefore includes personal data within the meaning of the European General Data Protection Regulation (GDPR).

The CUSTOMER is the entity subscribing to the COMMUNICATION ACTORS' FILE under the terms of the attached proposal, which has been signed and returned to TBS.

After accessing the LeFAC portal and its content, as well as the additional services offered by TBS, the Customer sought to utilize it for the purposes of its own commercial marketing under the conditions provided for herein.

The CUSTOMER agrees to comply with the combined provisions of the French Data Protection Act of 6 January 1978, as amended in regard to information technology, files and freedoms, and of the European General Data Protection Regulation (GDPR), as they currently exist and as they may be amended in the future, and to any other rules, law, recommendation or regulation of the French Data Protection Authority or any competent European Protection Authority, in particular with regard to the CUSTOMER's mandatory compliance with the GDPR.

TBS agrees to grant the CUSTOMER the right to use the LeFAC information portal, as well as privileged access to its additional services.

The list of these services is described in detail in the attached offer from TBS, which is signed by the CUSTOMER.

### ARTICLE 1 – DEFINITIONS

**LeFAC Advertisers:** All or part of the information portal relating to the advertisers' market that is created and regularly updated by TBS, and which contains the contact details (company name, address, business sector and Internet address, where possible) of the main advertisers in the country or countries subscribed to by the CUSTOMER, as well as individual contacts (surname, first name, position, telephone, fax and e-mail address, where possible). Access to this portal is via the use of a web interface created and developed by TBS.

**LeFAC Agencies:** All or part of the information portal relating to the creative agencies and media agencies market that is created and regularly updated by TBS, and which contains the contact details of the main agencies (corporate name, address, business sector and Internet address, where possible) and branch contacts (surname, first name, position, telephone, fax and e-mail address, where possible). Access to this data portal is via the use of a web interface created and developed by TBS.

**LeFAC Extract:** Access to information about LeFAC Advertisers and LeFAC Agencies using the web interface on a server hosted by a service provider chosen by TBS, with the ability to export the data in Excel format according to the conditions specified in the commercial offer.

**WhoWorksWithWho:** All or part of the information portal relating to the agency/advertiser links, which are regularly updated. Access to this portal is via the use of a web interface created and developed by TBS.

**Data Subject:** Person affected by the collection, management, transfer, hosting or backup of his or her personal data for which he or she has given his or her free and informed consent, having received prior information regarding the planned processing of his or her data.

## **ARTICLE 2 – WARNINGS**

The CUSTOMER already knows about and makes use of the Internet and the World Wide Web. The Internet is an open and informal network formed by the international interconnection of computer networks using the TCP/IP standard. Internet management is not carried out by any central entity. Each portion of this network belongs to a public, private or independent body. Its operation is based on cooperation between the operators of the different networks, with no obligation of supply or quality of supply between operators. Networks may have uneven transmission capabilities and specific usage policies. No one can guarantee the proper operating of the Internet as a whole.

## **ARTICLE 3 - PURPOSE OF THE AGREEMENT**

TBS grants the CUSTOMER, who accepts, the non-transferable and non-exclusive right to use “LeFAC”, which in any event remains the exclusive property of TBS, as the author, in respect to LeFAC Advertisers, LeFAC Agencies and WhoWorksWithWho, on a strictly personal basis, for the purposes of its internal commercial marketing.

To this end, the CUSTOMER is authorised to extract and, where appropriate, reproduce the information data provided on paper or using magnetic or electronic media, in accordance with its particular LeFAC Extract subscription as specified in the attached offer, exclusively for personal purposes for which it will undertake, with regard to its own professional responsibility, the processing required for the personal purpose it assigns to them in its capacity as Data Controller.

The Customer agrees to take all necessary measures to inform its staff and any person working on its behalf of the provisions of this clause and to ensure compliance therewith. The Customer warrants, within the meaning of Article 1120 of the French Civil Code, that its staff comply with the provisions of this clause.

In this respect, the CUSTOMER is duly informed that it is responsible for ensuring compliance with its own privacy policy, which it undertakes to respect, as well as to ensure that all its personnel, business partners and subcontractors do similar, in order that the latter may grant a level of quality, loyalty, confidentiality and security in terms of personal data protection that is at least equal to that with which TBS provides its CUSTOMER.

The CUSTOMER expressly acknowledges that it is strictly prohibited from using the information portal’s technologies, know-how or content for commercial purposes to produce one or more similar database(s) that may compete with LeFAC.

In addition, the CUSTOMER irrevocably agrees not to carry out the permanent or temporary reproduction of LeFAC, in whole or in part, by any means and in any form, as well as the translation, adaptation, arrangement or any other modification of LeFAC, and the reproduction of LeFAC that may result from these.

## **ARTICLE 4 - DURATION**

This agreement is entered into for an initial term of one year from the signature of this agreement.

It shall then be renewed by tacit agreement for a period of one year, unless terminated by either party, by registered letter with acknowledgement of receipt sent with one month’s notice prior to the anniversary date of this agreement, or earlier as provided for in the article entitled “termination” below.

## **ARTICLE 5 - INSTALLATION OF LeFAC**

The CUSTOMER may only use LeFAC for the specific needs of its establishment located at the address indicated in the attached commercial offer.

LeFAC is installed on the TBS server with a host chosen by TBS and accessible via an Internet connection.

It is expressly stated that TBS is not bound by any obligation of results or means regarding the services provided by the server hosting company. In particular, it is specified that in the event of a hardware failure of the server, the response time is 2 hours during working hours, 8 hours outside of working hours, and 48 hours over the weekend.

TBS reserves the right to modify the technical features of its server and the choice of its suppliers at any time. These changes shall, however, make it possible to offer levels of performance at least equivalent to those defined herein.

Given the complexity of global networks, the unequal capacities of different sub-networks, the influx of users at certain times of day, and the various “bottlenecks”, TBS’ responsibility is limited to the hardware and software installed on its server.

TBS may under no circumstances be held liable if its server is unavailable for reasons of force majeure, such as the long-term failure of the public electricity distribution network, strikes, riots, wars, storms, earthquake, failure of the public telecommunications network, or loss of Internet connectivity due to the public and private operators on which the CUSTOMER depends.

#### **ARTICLE 6 – LIABILITY**

It is expressly agreed that TBS may only be subject to an obligation of means as part of the performance of this agreement, which the CUSTOMER agrees to unconditionally.

In particular, the CUSTOMER acknowledges that due to the specific way in which such information portals are created, in particular with respect to the processing and dissemination of large quantities of information, the diversity of sources, and the significant and frequent changes that may affect this data, TBS cannot provide the CUSTOMER with a guarantee that the databases are error free, complete, and permanently up to date.

In any event, LeFAC shall be used under the sole supervision, management and responsibility of the CUSTOMER, which shall therefore use the information contained in LeFAC at its own risk and which shall assume sole responsibility for decisions or choices made on the basis of this information, without recourse against TBS.

Under no circumstances shall TBS be liable for direct or indirect damage that could result from the use of LeFAC, such as commercial loss, loss of turnover, loss of customer base, any business difficulties whatsoever, or loss of brand image suffered by the CUSTOMER or by a third party.

Any action directed against the CUSTOMER by a third party, and in particular any complaint by a third party data subject whose personal data could have been collected, saved or used by the CUSTOMER in a manner not in accordance with GDPR requirements, shall be treated as indirect loss and hence not incur any right to compensation.

In general, TBS may not be held liable for any commercial disruption that may result from the inability to access LeFAC, regardless of the duration of this lack of access, or, for example, which may result from the use of incorrect information contained in LeFAC (or for the fraudulent use of data resulting from the voluntary or involuntary actions of the CUSTOMER).

However, should TBS' liability arising directly or indirectly from this agreement be incurred, the amount of damages that it may be ordered to pay is expressly limited to the amount of the annual fee paid by the CUSTOMER to TBS during the year in which the damage occurs.

#### **ARTICLE 7 – OBLIGATIONS**

a) The CUSTOMER agrees to use LeFAC only for the purposes of its own commercial marketing.

b) The CUSTOMER shall refrain from divulging LeFAC, by any means whatsoever, to third parties. It agrees to impose this prohibition on all its employees and authorised users.

It shall not reproduce LeFAC or cause LeFAC to be reproduced, in whole or in part, in any form whatsoever, except under the conditions referred to in Article 3.

In the event of the termination of this contract by TBS or by the CUSTOMER, for any reason whatsoever, the CUSTOMER undertakes to erase any information taken from LeFAC from all media, and to no longer make use of it.

The CUSTOMER agrees to provide proof of erasure to TBS in application of the principles of the GDPR, which impose the obligation to return or destroy data when the data subject exercises its right to object or its right to be forgotten.

c) The CUSTOMER is responsible for ensuring the proper use of LeFAC.

d) The CUSTOMER shall:

- ensure that its company's structures take into account the new conditions involved in the use of LeFAC and, where applicable, take the necessary organisational measures,
- make the appropriate efforts to train its staff,
- warn its staff of the risk of errors that may occur during the initial operations.

e) The CUSTOMER declares that it has implemented an internal system capable of securing the installation, possession and use of LeFAC so that, in particular, only duly authorised users have access to the usernames and passwords enabling the use of LeFAC.

#### **ARTICLE 8 - OWNERSHIP**

TBS warrants that it is the author and producer of the LeFAC information portal.

As the author and producer, TBS is the sole holder of the intellectual property rights to the software, database and data that make up the LeFAC information portal, as well as all related documentation, reports or studies, in whatever form, produced by TBS as part of its services.

The CUSTOMER agrees:

- not to infringe TBS's intellectual property rights and legitimate interests, either directly or indirectly,
- on its own behalf and on behalf of the people working for it, not to unlock the LeFAC integrated protection systems,
- to maintain the ownership and copyright notices appearing in LeFAC at all times, as well as all documents delivered by TBS to the CUSTOMER,
- to respect the marks, names, and acronyms, or any other distinctive sign belonging to TBS, and to prevent any analogy being fostered in the minds of the public, for any purpose whatsoever and by any means whatsoever,
- not to reproduce the information portal or its documentation,
- not to communicate or distribute, by any means whatsoever, the information portal, its data, or all of its documentation to any third party not expressly authorised to receive it.

#### **ARTICLE 9 – CONFIDENTIALITY**

Each party is bound by the utmost professional secrecy regarding all information of any kind concerning each of them, LeFAC, and the methods and services to which it may have access under the terms of this agreement.

Each party agrees to ensure that these provisions are complied with by its staff and any employee or third party who may be involved in the performance hereof, in any respect whatsoever.

Each Party agrees to use the appropriate means to preserve the confidentiality of the information and documents to which they have had access during the performance of this agreement.

#### **ARTICLE 10 – FINANCIAL TERMS**

The CUSTOMER has subscribed to the option the pricing conditions indicated in the commercial offer, which it has accepted.

TBS will issue its invoices in advance each year, including added taxes. All invoices are payable within 30 days of the end of the month and without discount.

TBS has the right to revise the fee amount every year based on changes in the Syntec index. The Syntec benchmark index is that of the April preceding the effective date of the agreement.

In the event that an invoice remains unpaid on its due date, and if a formal notice to pay remains unheeded eight days after being sent, TBS may suspend all of its services covered by this agreement, without liability. Late payment penalties shall be due, automatically and without prior notice, for any amount unpaid on its due date. Such penalties are calculated at a rate equal to 1.5 times the legal interest rate. This suspension in service shall be the responsibility of the CUSTOMER, which agrees to bear all the consequences thereof, in particular price increases and delays in response times.

#### **ARTICLE 11 – COLLABORATION BETWEEN THE PARTIES**

TBS is expressly authorised by the CUSTOMER to use its name as a commercial reference for its prospective and existing customers.

The Parties agree to work closely together as part of their business relationship.

The Parties agree to communicate all difficulties that they may encounter with regard to their experience in the performance of the contract. Any such difficulties may thus be taken into account as quickly as possible, thereby contributing to the overall success of the collaboration.

## **ARTICLE 12 – DATA PROTECTION LAW / COMPLIANCE WITH THE EUROPEAN REGULATION FOR PROTECTION OF PERSONAL DATA**

The Parties agree to make the necessary declarations to the French Data Protection Authority (*Commission Nationale Informatique et Liberté*) in accordance with the mandatory provisions of law no. 7810.17 of 6 January 1978, known as the amended French Data Protection Act (*loi informatique et libertés*) relating to information technology, files and freedoms, and the European General Data Protection Regulation (GDPR), as they currently exist and may be amended in the future, and to any other rule, law, recommendation or regulation of the French Data Protection Authority or of any competent European Protection Authority.

For the use of LeFAC Extract with personal data exported from LeFAC, the CUSTOMER assumes full and complete responsibility for the data transferred, both in terms of confidentiality and security during the transfer and for any subsequent use, operation, hosting and storage of said data. The transfer of data entails the *de facto* transfer of responsibility for any processing carried out by the CUSTOMER.

Accordingly, TBS waives any liability in the event of a breach of GDPR provisions resulting from the transfer of personal data carried out by the CUSTOMER.

The CUSTOMER is responsible for ensuring that the processing of personal data in its possession, which is the subject of the transfer, is in compliance with national, European and international personal data protection laws.

The CUSTOMER shall not be entitled to hold TBS liable once it has exported LeFAC data (via Excel or otherwise).

On the other hand, the CUSTOMER shall cover and guarantee TBS against any conviction that may be handed down to it (or to any of its subsidiaries) if a data subject brings an action against TBS for which all or part of the damages have been caused by the transfer of its personal data by the CUSTOMER in breach of GDPR rules.

The CUSTOMER agrees to ensure that any email sent to the natural persons identified in the LeFAC database contains a valid address that the recipient can use to request that the sending of such missives ceases. The CUSTOMER agrees to no longer send emails to any person making such a request, and to notify them that their request has been recorded and that the data subject's personal data has been deleted from their own database, within one month.

The CUSTOMER agrees to inform TBS of this immediately so that TBS can update the information portal within the same timeframe.

The CUSTOMER shall refrain from sending e-mails to the contacts listed in the LeFAC database by masking or hiding the identity of the sender on whose behalf the communication is made. The CUSTOMER shall comply with its transparency obligation by ensuring that the sender's address is systematically included in the body of its message, and that an "unsubscribe" link is systematically present in each email. The contact is thus provided with a simple way to exercise its right to no longer receive information from the Customer. Each email must also clearly indicate the procedure to be followed and the contact details of the CUSTOMER, thereby allowing the contact to exercise his or her rights to access, portability, rectification and erasure of the data concerning him or her.

To avoid overusing data from the LeFAC information portal, which would increase the risk of the CUSTOMER being black-listed by anti-spam engines, the CUSTOMER agrees not to send more than 1-2 emails based on LeFAC data per month, excluding any list of recipients for which the CUSTOMER has obtained prior consent.

If this process and all of the aforementioned provisions are not complied with, the CUSTOMER may hold TBS liable for breach of contract.

If the CUSTOMER holds a LeFAC subscription in countries other than France, it acknowledges being informed that in order to send email messages to the contacts listed in these databases it must comply with the different countries' laws, in particular in countries such as Germany, Switzerland, Italy, and Spain, where it must obtain a single or double opt-in email prior to each contact. In the event of non-compliance by the CUSTOMER with each country's internal legislation, TBS shall not be held liable and the CUSTOMER alone shall bear any consequences that may ensue.

## **ARTICLE 13 - TERMINATION**

In the event of non-compliance by the CUSTOMER with any of the clauses herein, and in particular in the event of non-payment of the sums due pursuant to Article 10 hereof one month after their due date, TBS may automatically terminate this agreement, fifteen days after the sending of a formal notice that remains unheeded.

A Party may automatically terminate this agreement immediately and without notice in the event of the termination or windup of the other party, breach of the confidentiality clause, and breach of the Data Protection Act clause.

The termination of this agreement shall not release the CUSTOMER from any financial obligations to TBS arising prior to the termination date. In all cases, the sums billed or billable by TBS shall remain due in full from the CUSTOMER, who shall pay them no later than one month following the termination of the agreement.

#### **ARTICLE 14 – CONSEQUENCES OF TERMINATION**

In all cases, the annual fee payable under Article 10 shall remain due in full to TBS, regardless of when the contract is terminated.

In all cases of termination, the CUSTOMER agrees to erase any information taken from LeFAC from all media, and to no longer make use of it.

#### **ARTICLE 15 – TRANSFER OF THE AGREEMENT**

This agreement is between the sole contracting parties. It may not be transferred to the parties' successors or assignees without the prior written consent of the other party, pursuant to Article 1690 of the French Civil Code.

#### **ARTICLE 16 - FORCE MAJEURE**

Initially, a case of force majeure according to the criteria normally adopted by the case law of the French courts and tribunals shall suspend the obligations of this agreement.

If the force majeure event continues for more than three months, this agreement shall be terminated at the request of the first party to act.

#### **ARTICLE 17 - ENTIRE AGREEMENT**

This agreement expresses all the obligations of the parties.

Any general or specific condition contained in a document sent by each of the parties to the other cannot be included in this agreement, unless it is the subject of an amendment signed by both parties.

#### **ARTICLE 18 - PARTIAL INVALIDITY**

If any provision of this agreement is deemed null and void with regard to a current law or a final court decision, said provision will be severable but all other provisions will remain effective and enforceable.

#### **ARTICLE 19 - AMENDMENT OF THE AGREEMENT**

Any amendment to this agreement may only be taken into account if an addendum is signed by both parties.

#### **ARTICLE 20 - JURISDICTION**

In the event of a dispute relating to the interpretation or performance of this agreement, exclusive jurisdiction is granted to the Commercial Court of Paris, whether or not there are multiple defendants or the introduction of third parties. This jurisdiction also applies in the case of summary procedure.

#### **ARTICLE 21 - DOMICILIATION**

For the performance of this agreement, the Parties elect domicile at their respective registered offices.

#### **ARTICLE 22 - APPLICABLE LAW**

This agreement is subject to French law.

I acknowledge that I have read and accepted the "General Terms and Conditions of Use"

Date  
Stamp

Name, position and signature