Transparency-One develops, publishes and markets an on-line collaborative software solution - i.e. in “SaaS mode” - (the “Transparency-One Solution”) which allows subscribers to Transparency-One services to verify data, assess risks and communicate in real-time.

BY CLICKING THE BOX INDICATING YOUR ACCEPTANCE OR BY OTHERWISE ACCEPTING A REGISTRATION FORM, THESE GENERAL SUBSCRIPTION TERMS AND CONDITIONS (THE “GSTC”) OR AN AGREEMENT WITH TRANSPARENCY-ONE OR A DISTRIBUTOR AGREEMENT WITH AN AUTHORIZED DISTRIBUTOR OF TRANSPARENCY-ONE, YOU (“SUBSCRIBER”) HEREBY ACCEPT THE AGREEMENT AND ACKNOWLEDGE AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

IF YOU ARE ENTERING INTO THE AGREEMENT ON BEHALF OF A COMPANY OR ANOTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THE AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU OR ANY SUCH ENTITY DO NOT AGREE TO THE TERMS AND CONDITIONS OF THE AGREEMENT, YOU MAY NOT USE TRANSPARENCY-ONE SOLUTION.

Subscriber acknowledges that prior to its conclusion of the Agreement it has been granted access to, and was able to request and/or consult, all necessary information to take into consideration the offer of Transparency-One, including the associated technical prerequisites, as well as all contractual documents as referred to in article 3 below. In this context, Subscriber was able to make sure the Transparency-One Services met its needs.

Subscriber hereby declares that it freely agrees to be bound by the Agreement and to use the Services.

Transparency-One recommends to Subscriber to print and keep a hard copy of the GSTC, which are also downloadable at any time.

1 - Definitions

“Administrator”: the natural person as appointed by Subscriber in accordance with the terms of article 4.4 of the GSTC, having authority to bind any Authorized User to the terms and conditions of the Agreement. By default, the Subscriber’s representative - subscribing online to the Services and designated as such in the Registration Form - is the Administrator.

“Agreement”: the contractual documents between Transparency-One and Subscriber as defined in article 3 of the GSTC which govern the subscription of the Services, and any potential amendment.

“Authorized Distributor”: the partner of Transparency-One’s which has concluded a valid contract with Transparency-One relating to the resale of subscriptions to the Services directly to Subscribers.

“Authorized User”: any natural person placed under the responsibility of Subscriber (including employee, agent, service provider, representative), identified and authorized by the Administrator to use the Transparency-One Solution and more generally the Services, in strict compliance with the terms and conditions of the Agreement.

“Business Days”: from Monday to Friday, excluding French public holidays.
“Connection Data”: the logins and passwords of each Authorized User.

“Content / Data”: any information of any nature, transmitted and / or received by Subscriber and / or Authorized Users - including Personal Data and where applicable, the Shared Data - in the context of the use of Transparency-One Solution and more generally of the Services by Subscriber.

“Data Transfer Limit”: the volume of Data defined in the Registration Form and authorized under Transparency-One Services subscribed by Subscriber; any volume of Data exceeding the Data Transfer Limit shall be subject to an additional invoice in accordance with the terms of the Registration Form.

“Distributor Agreement”: the order and/or the contract existing between Subscriber and Authorized Distributor which allows Authorized Distributor to directly resale to Subscriber the subscription to Transparency-One Services; the Distributor Agreement incorporating the Agreement by reference with regards to the subscription to Transparency-One Services.

“Documentation”: the documentation in English language describing the main functionalities of the Solution, and any Updates of such documentation, as made available to Subscriber within the framework of the Agreement, and in the medium of Transparency-One’s choice.

“Effective Date”: the date of online registration, as defined in the Registration Form.

“Environment”: Subscriber’s computer equipment, in particular hardware, operating systems, third-party software, connection to an Internet access service.

“General Subscription Terms and Conditions” or “GSTC”: the applicable version of the GSTC.

“Party/Parties”: individually, Subscriber or Transparency-One, and collectively Subscriber and Transparency-One.

“Personal Data”: any personal Data in the meaning of article 4 -1) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (the “GDPR”).

“Price Calculation”: the price calculation made automatically from the rates reported to Subscriber, once the Registration Form is completed by Subscriber, and prior to the validation of such Registration Form.

“Registration Form”: the online, firm, registration form, which notably designates Subscriber and Transparency-One as contracting entities, the scope (and in particular the Data Transfer Limit and the subscribed options), as well as the initial term for the Services and the related financial conditions resulting from the Price Calculation. Any registration form - to constitute a Registration Form - shall be duly completed and accepted by Subscriber, and entails Subscriber’s express acceptance of the GSTC.

“Services” or “Transparency-One Services”: the provision of the Solution by Transparency-One in SaaS mode to Subscriber which includes (i) remote and online access by Authorized Users to the Solution, for the term and the scope of the Services, (ii) hosting of the Solution on Transparency-One Server and (iii) maintenance, depending on the terms of the selected subscription (direct or indirect maintenance through Authorized Distributor).

“Shared Data”: the Data that Subscriber agrees to share with its Trading Partners through the Transparency-One Solution. By default, the Data of Subscriber is not shared, and only Subscriber - upon
invitation by its Trading Partners - shall decide of the level of sharing for such Shared Data with the downward chain of its Trading Partners.

“Subscriber”: the entity, which subscribes to Transparency-One Services, signatory of the Registration Form, and co-contractor with Transparency-One.

“Technical Prerequisites”: the equipment (hardware, operating system, Internet connection with sufficient bandwidth), necessary for the activation and the use of the Solution, and more generally of the Services, as described in English language in the Solution, and any evolution thereof throughout the term of the Agreement.

“Third-party software”: the third parties’ standard software, proprietary or open source, included in the Solution.

“Trading Partners”: Subscriber’s direct and/or undirect customers - exclusively part of the “downward” supply chain - having subscribed to the Transparency-One Services, which have authorized access to the Transparency-One Solution and which therefore may have access to the Shared Data.

“Transparency-One”: Transparency-One, a French “société par actions simplifiée” with a capital of 2,222,000.00 euros, incorporated and registered in Paris under number 815 233 242, whose head office is located 47 rue de Monceau 75008 Paris - France.

“Transparency-One Server”: all the data processing system on which the Solution is installed, which is the property of Transparency-One and/or on which Transparency-One owns the rights necessary for the provision of the Services under the Agreement, located on the geographical site(s) chosen by Transparency-One and connected to the Internet.

“Transparency-One Solution” or “Solution”: the English version of the collaborative software package solution for professional use and its related Documentation, including any potential Updates, made available to Subscriber by Transparency-One as they become available, as part of the Services.

“Update(s)”: the improvements to Transparency-One Solution in terms of functional evolutions, the corrections of possible anomalies to the Solution and/or if applicable, any evolution of the Documentation throughout the term of the Agreement, to the exclusion of any additional module.

2 - Purpose of the Agreement

The purpose of the Agreement is to define the terms and conditions of use of the Services by Subscriber. The Transparency-One Services do not include any implementation services of the Transparency-One Solution.

3 - Contractual documents

The Agreement is composed of the following documents:

   (i) the Registration Form;
   (ii) the General Subscription Terms and Conditions.

In case of conflict, ambiguity or inconsistency between the contractual documents listed above, the first-listed shall prevail.
Furthermore, articles 7, 9, 10, 11 and 12 of the GSTC shall prevail over any other contractual provisions.

For the sake of clarity, the Distributor Agreement incorporates the Agreement by reference with regards to the subscription to the Transparency-One Services.

4 - Access and use of the Solution; Technical Prerequisites

4.1 Transparency-One grants Subscriber the personal, non-exclusive and non-transferable right of access and use of the Solution and more generally the Services for its sole professional activities in accordance with the terms and conditions of the Agreement and the Documentation, and in particular for the scope and the term of the Agreement.

Any non-expressly authorized use of the Solution is strictly prohibited.

4.2 Subscriber acknowledges and agrees that Transparency-One Solution is a standard software and is designed to meet the needs of the largest number of users. Only the functionalities and tasks corresponding to the options subscribed in the Registration Form may be carried out within the limit of the Data Transfer Limit, and more generally within the scope defined in the Registration Form. Subscriber acknowledges and agrees that training is recommended prior to the use of the Solution, and that the Transparency-One technical support service is not intended to be used as substitute for such training.

4.3 Subscriber shall be responsible for ensuring that each of its involved Authorized Users is made aware and complies with the terms and conditions of the Agreement governing the use of Transparency-One Solution and more generally the Services, which are therefore used under Subscriber’s sole control, direction and responsibility.

4.4 Subscriber shall appoint an Administrator at the Effective Date who shall be primary contact for Transparency-One in designating the Authorized Users. The Administrator may appoint delegated administrators. The Administrator shall update the Authorized Users’ lists and profiles and approve new Authorized User accounts. Any replacement of the Administrator or any delegated administrator shall be subject to registration in the Transparency-One Solution.

4.5 Subscriber represents having been informed of the Technical Prerequisites at the Effective Date. Transparency-One is free to upgrade and change the Technical Prerequisites throughout the term of the Agreement, notably due to the evolution of the Solution and more generally the Services, and will inform Subscriber of such evolution by any means of Transparency-One’s choice, and in all extent possible, in advance.

4.6 Subscriber acknowledges and agrees it shall bear all costs and maintenance fees for the provision and maintenance of the Environment throughout the term of the Agreement, including the subscription to telecommunication services required for the use of the Solution and more generally the Services, in order to ensure the compatibility of the Environment with the latest version of Transparency-One Solution.

4.7 Subscriber acknowledges that an Environment which does not comply with the Technical Prerequisites may cause performance degradation of the Solution and more generally of the Services, which Transparency-One may not in any way be held responsible.
5 - Security and Data

5.1 Authorized Users shall authenticate themselves to connect to the Transparency-One Solution through their Connection Data, which remains strictly personal to each Authorized User. Any connection to the Transparency-One Solution made through the Connection Data shall be deemed to have been made by Subscriber itself or by the Authorized Users. In this context, Subscriber shall ensure that the Connection Data is not used by unauthorized persons, and shall implement all methods and measures of protection for the Connection Data and the Environment against any intrusion and any virus. Transparency-One shall not be held responsible in the event of wrongful or fraudulent use of the Connection Data.

5.2 Transparency-One is under no obligation to monitor any Data transmitted and/or received by Subscriber and/or to monitor the Shared Data, and cannot in any way be held responsible for such data.

5.3 Subscriber acknowledges and agrees that it is solely responsible for any use of the Transparency-One Solution and more generally the Services by Authorized Users, and in particular of any Data (including Personal Data), transmitted and/or received and/or of any Shared Data in any way whatsoever, by Subscriber under the Services. In particular, Subscriber is solely responsible for all Content accessible on its allocated workspace on the Transparency-One Server and of any Data related to the access and use of the Transparency-One Solution, and more generally of the Services.

5.4 Subscriber warrants that Data will not give rise to any third-party claims, including claims relating to the intellectual property rights of third-parties, pornographic materials, libel, slander, violations of privacy, or other third-party rights.

5.5 Notwithstanding the above, and in the event that Transparency-One is informed that the Data does not comply with the terms of the Agreement and more generally of any use of the Services for illegal purposes, or infringing third-party's rights, or in case of emergency, Transparency-One reserves the right, at its sole discretion, as of right, without notice, without any prior formality and without liability to Subscriber, to delete such Data and/or to deny access to such Data and/or access to the Transparency-One Solution and/or to all or part of the Services.

5.6 Subscriber acknowledges and agrees that Subscriber acts as a “data controller” under article 4-7) of GDPR. To the extent Personal Data is stored and/or processed under the Agreement, Transparency-One shall comply, as “data processor” under article 4-8) of GDPR, to Subscriber’s documented instructions. Subscriber’s documented instructions outside of the scope of the Services shall be at Subscriber’s expense and shall be processed subject to their technical and organizational feasibility. The Parties shall implement all technical and organizational measures necessary to comply with applicable laws and regulations regarding the protection of Personal Data. By default, the performance of the purpose of the Agreement as well as the use of the Services and of its functionalities constitute the aforementioned documented instructions by Subscriber.

5.7 As data processor, Transparency-One shall use commercially reasonable efforts - in accordance with standard practices - to preserve the integrity, the security and the confidentiality of Data, in particular Personal Data, transmitted and/or received and/or of the Shared Data of Subscriber within Transparency-One’s hosting and data processing systems. Subscriber acknowledges that the transmission of such data takes place through the Internet, and as such, the technical reliability of the transmission of data is relative, and Subscriber further acknowledges that Transparency-One shall not be responsible for any loss or breach of such Data due to unavailability or degraded performances of the Internet, network elements or other causes outside Transparency-One’s control.
5.8 Subscriber expressly authorizes Transparency-One to collect, process, store, use the Data and share any Shared Data by Subscriber through the Solution in accordance with the terms and conditions of the Agreement, except for Personal Data for which Transparency-One only acts in accordance with the documented instructions of Subscriber. In this regard, Subscriber warrants that no applicable legal or regulatory requirement prevents Transparency-One from complying to its obligations under the Agreement. Moreover, Subscriber warrants to Transparency-One that it has obtained the consent of all natural persons prior to the collection, processing, storage, use and sharing of their Personal Data.

5.9 Subscriber authorizes Transparency-One to export Personal Data to countries outside of the European Union provided that such transfers comply with an appropriate legal framework. As such, and in the event that the transfer of data outside of the European Union has to be governed by the standard contractual clauses adopted by the European Commission in its decision of February 5, 2010, Subscriber expressly mandate Transparency-One to sign such standard contractual clauses on its behalf.

5.10 Within the limit of one audit per annual period and upon a notice period of fifteen (15) Business Days - subject to having previously requested in writing, from Transparency-One, information related to Transparency-One’s compliance of its obligations as a processor and if the answers are not considered satisfactory by Subscriber (except in case of imminent risk relating to Personal Data’s security) - Subscriber may notify Transparency-One, by registered letter with acknowledgment of receipt, the request for an on-site compliance audit for the processing of Personal Data under the Agreement, duly justified and in which Subscriber appoints the designated auditor, the date and the scope of intervention of such auditor. For the sake of clarity, the scope of the on-site audit shall be strictly limited to Transparency-One’s processes operating the Services as processor of the Personal Data entrusted by Subscriber under the Agreement.

The designated auditor shall be an independent auditor, be professionally acknowledged in his field, and shall not be a competitor of Transparency-One. The auditor shall imperatively sign a written non-disclosure agreement before starting the audit.

The designated auditor shall not interfere with Transparency-One’s activities when carrying out its audit, which may only be conducted during Transparency-One’s opening hours. Transparency-One shall assist the auditor within the limit of two (2) man/days.

Subscriber shall bear all audit costs, including but not limited to auditor’s fees, and shall reimburse Transparency-One the costs and expenses related to the audit, including the costs and expenses related to the time spent by Transparency-One’s personnel on the audit exceeding the abovementioned two (2) man/days limit, based on the average man/days’ rate of Transparency-One personnel involved in the audit.

Subscriber undertakes to communicate the results of the audit to Transparency-One, and if it is found that Transparency-One is not in compliance with its obligations under the laws and regulations on the protection of Personal Data, GDPR in particular, Transparency-One shall take all necessary measures to remedy this situation and shall inform Subscriber of the measures taken in this regard. The Parties acknowledge that any and all reports and information resulting from such audit are confidential information.

5.11 Subscriber acknowledges that Transparency-One may - except for Personal Data - compile information for statistical purposes and/or anonymous information relating to the execution and use of the Solution, in order to create statistical analysis, notably for managing operations within the framework of the Transparency-One Services, and / or for research and development purposes.
6 - Hosting, availability and maintenance

6.1 The Services involve the storing of Data mutualized in Transparency-One Servers. The storage space available for the storage of Data (and, where relevant, the related fees) is set out in the Registration Form or, if applicable, the Distributor Agreement.

6.2 Services are available twenty-four (24) hours a day and seven (7) days a week, subject to (i) periodic or exceptional maintenance and security procedures (scheduled or not scheduled by Transparency-One), (ii) events of force majeure and/or (iii) cases of suspension of the Services as provided below.

6.3 Subscriber shall promptly designate at least one technical representative (and within the limit of two technical representatives) amongst Authorized Users, who shall be the sole authorized contact(s) of Transparency-One for maintenance matters - sufficiently competent(s), qualified and trained - as part of a direct subscription to the Services with Transparency-One. In such case, Subscriber undertakes to be actively involved and notably to provide Transparency-One with all the information necessary to carry out the technical support.

6.4 For the avoidance of doubt, Transparency-One does not directly provide Subscriber with any technical support as part of the Services, when the Services were purchased under a Distributor Agreement. In such case, Authorized Distributor is solely responsible for the provision of level 1 Support to Subscriber, including the reception of all Subscriber’s inbound requests (telephone, chat, web helpdesk and/or answer center support, logging, categorization, prioritization, tracking). Level 2 technical support is carried out by Transparency-One at Authorized Distributor’s request, and to Authorized Distributor, when necessary. In such case, Subscriber shall be informed by Authorized Distributor when the problem is resolved and/or of the receipt of Transparency-One’s answer and/or of the necessary time for Transparency-One to resolve the problem. Under no circumstances shall Subscriber directly contact Transparency-One under the Services subscribed through a Distributor Agreement.

6.5 Transparency-One reserves the right to amend and upgrade the Services in the context of the maintenance. Transparency-One may, at its discretion and without liability, interrupt access to the Services or the Solution for maintenance or upgrade purposes. Transparency-One will use its best efforts to inform Subscriber of any interruption which is predicted to last for more than one (1) hour, by placing a notice on the welcome page of the Services prior to such interruption.

7 - Confidential Information, use of content and references

7.1 The Parties agree the following information is strictly confidential: all pricing information, data, information or knowledge, regardless of its format, its nature (commercial, technical, financial etc.) or its medium, they may receive from the other Party in the context of the Agreement (the “Confidential Information”).

7.2 Each Party agrees that it will neither communicate or disclose to any third party (unless otherwise stipulated or legally required), the other Party’s Confidential Information, unless: (i) with the explicit prior consent of the disclosing Party; (ii) the information in question has become public knowledge through no fault of the receiving Party; (iii) the information in question has been obtained by the receiving Party from a third party free of any obligation of confidentiality; (iv) the information is independently developed by the receiving Party without use of or access to the disclosing Party’s information; and/or (v) such disclosure is court-mandated or required to disclose Confidential Information in order to comply with applicable laws or regulations. In such case, the receiving Party shall, to the extent reasonably practicable, seek confidential treatment of the information so disclosed.
and shall notify in advance and in writing the other Party in order to allow such Party to find any protective means.

7.3 Subscriber acknowledges that the technical specifications, source code, object code and any other information regarding the Solution and more generally the Services (the “Transparency-One Solution Information”) are Confidential Information of Transparency-One. Subscriber undertakes to maintain the confidentiality of the results of any trials carried out on the Services.

7.4 Each Parties undertake to use the Confidential Information solely for the purposes of executing the Agreement and within the limits permitted by the Agreement, and to protect the Confidential Information of the other Party with the same degree of care as is used with respect to its own Confidential Information.

7.5 The Parties shall only communicate the Confidential Information of the other Party to the persons with a need-to-know, who agree to be bound by the provisions of the Agreement, and for the exclusive purposes of such Party exercising its rights or performing its obligations under the Agreement.

7.6 Each Party shall ensure that the aforementioned persons sign a confidentiality agreement including provisions substantially equivalent to those of this article, and shall be responsible for all acts and omissions by such persons.

7.7 If an unauthorized use or disclosure of Confidential Information occurs, the Party making the unauthorized use or disclosure shall immediately notify the other Party, and shall, at its own expense, take all reasonably necessary steps to recover such Confidential Information and to prevent subsequent unauthorized use or disclosure thereof.

7.8 The obligations of confidentiality of the present article shall apply retroactively to all Confidential Information disclosed by the Parties prior to the Effective Date, and shall continue (i) with respect to Transparency-One Solution Information, for the entire term of the Agreement and for ten (10) years following its expiration or termination for any reason whatsoever, and (ii) with respect to all other Confidential Information, for the entire term of the Agreement and for three (3) years following its termination or expiration, for any reason whatsoever.

7.9 Subscriber acknowledges and agrees that the Shared Data may be shared with / made visible to its Trading Partners through Transparency-One Solution, depending on the access rights Subscriber configures using the Solution; it being reminded that by default, the Data of Subscriber is not shared. In such case, Subscriber acknowledges and agrees that its Trading Partners might use Transparency-One Solution to share with their own trading partners all or part of the Shared Data that was made available to them, and under their respective legal and regulatory obligations.

Similarly, Subscriber may gain access to data shared by other subscribers as part of the Services. In such case, Subscriber undertakes to only share with its own Trading Partners and in any event, depending on the access rights set by said subscribers for their trading partners, and in the exclusive context of the use of the Services.

Subscriber and its Trading Partners that exchange or share Data shall maintain the confidentiality of any Confidential Information made available to them and agree to use such Data solely for the purposes for which access was granted to them.

Transparency-One shall not be responsible for any breach related to the confidentiality obligation of Subscriber and/or any Trading Partner and more generally for any use of Data by Subscriber or by any Trading Partner.
7.10 Subscriber authorizes Transparency-One to quote and/or reproduce, for the purposes of its internal and external communication, on any medium and in any form of its choice, Subscriber’s names and logos.

8 - Financial conditions

The financial conditions relating to use of the Services are defined in the Registration Form according to the Price Calculation.

9 - Intellectual property rights; rights granted

9.1 Transparency-One Solution remains the exclusive property of Transparency-One and/or its licensors. Any licenses and rights are granted by Transparency-One on a personal basis (unless otherwise expressly stated in the Agreement) to the sole Subscriber and as expressly provided in the Agreement and the Documentation, on a non-exclusive, non-transferable basis and for its own professional needs as part of its business activities. Any right not expressly granted by Transparency-One to Subscriber under the Agreement is excluded; the Agreement not granting any property rights to Subscriber relating to Services, to the Transparency-One Solution and more broadly to Transparency-One’s technology and/or to the intellectual property rights of Transparency-One and/or of its licensors.

9.2 Subscriber is expressly prohibited from interfering in any way whatsoever with the Services and in particular from using the Services in a non-compliant way with their purposes and/or with the terms and conditions set out in the Agreement and/or the Documentation. In particular, Subscriber shall not: (i) enable a third-party to access and use Transparency-One Solution and/or the Services, and notably to sell, rent, sublicense, make available or otherwise transfer and/or share the rights pertaining to the Solution, whether in whole or in part and by any means whatsoever, except as otherwise stated in the Agreement; and/or (ii) create derivate works based on the Solution; and/or (iii) attempt to gain unauthorized access to the Services or to the associated systems or networks; and/or (iv) reproduce all or part of the Solution; and/or (v) alter or disrupt the integrity or the execution of the Services or the data contained therein; and/or (vi) reverse-engineer the Solution except as otherwise permitted by applicable laws; and/or, (vii) access the Services in order to create or market a product similar to the Solution or a service likely to compete with the Services, or to copy characteristics, functions or graphics elements of the Solution; and/or (viii) use the Services in order to store or transmit any malicious code (in particular any virus) and/or obscene, libellous, or otherwise unlawful or infringing material. In addition, considering the authorized use of the Services by Subscriber, Subscriber shall not send or store data that is not related to its professional activities.

9.3 Subscriber shall maintain intact the author’s right notices and other notice of intellectual property rights displayed in or on the Solution and the Documentation.

9.4 Intellectual property rights arising from any services carried out by Transparency-One pursuant to the Agreement, including, where relevant, during maintenance and training, are and shall remain the sole and exclusive property of Transparency-One. Subscriber undertakes to communicate and cause its employees and agents to communicate, at Transparency-One’s expense, any and all documents which Transparency-One deems reasonably necessary to protect its proprietary rights as set forth in the present article.

9.5 No license or other right to any trademarks and/or domain names of Transparency-One are granted as part of the Agreement. Such trademarks and domain names are and shall remain the sole and exclusive property of Transparency-One and/or its licensors.
9.6 The Solution may contain one or more library(ies), file(s) or other (including Third-party software) intended to assist Subscriber in using the Solution. As such, Transparency-One grants to Subscriber, on the basis of the licenses acquired from its licensors, a right of use for such software components, libraries and files included in the Solution provided that Subscriber complies with the terms and conditions of the Agreement, or as the case may be, with all specific terms and conditions related to such components, as defined in the Documentation.

In particular, Subscriber is informed that the Solution uses open source components. Such components and their associated license agreements are defined in the Documentation.

10 - Warranties

Unless otherwise expressly stated in the Agreement, the Solution, and more generally the Services made available to Subscriber under the Agreement are provided “as is” and are used by Subscriber without any warranty of any kind, express or implied, notably with regards to their quality, performances and/or results. To the maximum extent permitted by applicable law, Transparency-One expressly excludes any warranty, representation and other commitments of any kind, express or implied, other than those expressly prescribed by applicable law, including notably warranties of merchantability and fitness for a particular purpose.

11 - Limitations on liability

11.1 Transparency-One is bound by an obligation of means under the Agreement. Should Transparency-One be held liable, whatever the nature and/or the cause for the action:

- only direct and foreseeable damages may result in compensation;
- any and all indirect material, immaterial, or unforeseeable damages and notably in case of interruption of the functioning of the Solution and/or the Services, operating losses, commercial prejudice, loss of clientele, any commercial disruption, loss of brand image, loss or corruption of data, costs relating to the acquisition or subscription to a third substitute service/solution, suffered by Subscriber, Authorized Users, Trading Partners and/or a third party, shall under any circumstances result in compensation to Subscriber, even if Transparency-One has been notified of any such damages;
- Transparency-One’s aggregate liability - for all types of causes and damages whatsoever and for the term of the Agreement - shall not exceed the amount paid by Subscriber relating to the Services during the twelve (12) months preceding the event that generated the claim.

In any event, Transparency-One will not be liable in case of: (i) unauthorized and/or fraudulent access to the Services; (ii) use by Subscriber and/or Authorized Users of external data processing means other than those made available to Subscriber by Transparency-One; (iii) non-compliance with the recommendations of Transparency-One; (iv) more generally, in the event of non-compliant, wrongful or fraudulent use of the Services; and/or (v) any damaging event over which Transparency-One does not have control, such as resulting from the connection of the Environment to the Transparency-One Server, the wrongful use and/or re-routing of data, Content, and/or of the Connection Data, the disruption of the telecommunication network, of the Internet and more generally any element which may be attributed to a third party, Subscriber and/or its representatives.

11.2 The Parties expressly agree that any claims for damages against Transparency-One arising in connection with the Agreement will be time-barred one (1) year after the event that generated the claim.
11.3 Subscriber acknowledges that the terms and conditions of the Agreement reflect the allocation of the risks under the Agreement and the economical balance required by the Parties on the one hand, and that the Agreement would not have been concluded without the limitations of liability as set out in this article on the other hand, and that they shall remain in force even in the event of termination or dissolution of the Agreement. It is expressly agreed that Transparency-One’s limitations of liability as stated above include any claim directed against Transparency-One’s employees, subcontractors or any other person authorized by or acting on behalf of Transparency-One.

12 - Non-infringement warranty

12.1 Transparency-One undertakes to ensure, at its own expense, Subscriber’s defence against any claim relating to the infringement of an intellectual property right in France by the Solution under the Agreement, provided that Subscriber: (i) informed Transparency-One in writing of the existence of such allegation as soon as it arises; (ii) has allowed Transparency-One to have the sole direction of the defence and any negotiations for a settlement; (iii) actively collaborates in good faith with Transparency-One, at the request of Transparency-One, for the defence or amicable settlement of the dispute; (iv) used the Services and in particular the Solution in strict compliance with the Agreement, the Documentation and recommendations from Transparency-One.

12.2 If a claim or potential claim is to be brought against Subscriber as a result of using the Solution or if Transparency-One believes that it may be the case, Subscriber agrees that Transparency-One, at its own choice and at its own expenses, obtains for Subscriber the right to continue to use, or replace or modify the elements in question, so as to remove all grounds for such claims, without substantially altering the functionalities of the Solution. Otherwise, Transparency-One is free to terminate the Agreement and shall refund Subscriber for any amount received by Transparency-One for the remaining contractual period from the effective date of termination.

It is specified that Transparency-One shall pay all damages awarded against Subscriber because of an infringement of Transparency-One Solution in France, once the court decision establishing the damages is final and acquired the effect of res judicata, including any fees and expenses of any kind incurred by Subscriber for his defence, including attorneys’ fees, within the limits set out in article 11 of the GSTC.

12.3 In any event, Transparency-One shall not be held liable if the abovementioned claim is based on: (i) any act or omission from Subscriber unauthorized under the Agreement; (ii) the use of the Solution in combination with any other software or technology not provided by Transparency-One; (iii) Third-Party Software (open source components in particular); and/or (iv) the Content.

12.4 This article states Transparency-One entire liability and Subscriber’s sole remedy as to the infringement of third parties’ intellectual property rights and/or any other proprietary right within the framework of the Agreement, which Subscriber expressly acknowledges and accepts.

12.5 Subscriber agrees to indemnify and defend Transparency-One against any third-party claim relating to the use of Data which infringes the intellectual property rights and/or rights relating to the personality of such third party or which constitute an infringement of the applicable laws and regulations. Any amicable settlement related to such claim shall require Transparency-One’s consent which shall not be refused without legitimate reason.

13 - Term and termination
13.1 The Agreement comes into force at the Effective Date, for the term and under the conditions of renewal of the Agreement as stated in the Registration Form or in the Distributor Agreement, as the case may be.

13.2 In the event of a breach by either Party to its contractual obligations under the Agreement, which is not cured within thirty (30) days following the reception of a notice by registered letter with acknowledgment of receipt by the breaching Party, the notifying Party may notify, without advance notice and as of right, by registered letter with acknowledgment of receipt, the termination of the Agreement, without prejudice to any other rights that such Party could be entitled to under the Agreement. Notices of termination shall be deemed received by the other Party at the time of the first presentation of the registered letter with acknowledgment of receipt.

13.3 At the end of the Agreement, for any reason whatsoever:
- Subscriber’s access to the Services is terminated. In accordance, and before the effective termination of the Agreement, Subscriber is required to recover the Data of Subscriber and other data accessible and visible by Subscriber through the Solution’s functionalities, or to request from Transparency-One the recovery of a copy of such data’s last performed backup. The data recovery shall be made in the standard format on the market of Transparency-One’s choice, and depending on Subscriber’s Data volume - by downloading or on any other medium, which shall then be billable as part of an additional service by Transparency-One;
- Subscriber undertakes to immediately pay any and all amounts due under the Agreement, without any right to offset or deduction, all the amounts paid to Transparency-One for the Services being not refundable;
- Subscriber undertakes to promptly return to Transparency-One any Confidential Information, and any Connection Data provided under the Agreement.

Notwithstanding the foregoing, in the event the Agreement was terminated by Subscriber due to Transparency-One’s material breach of its contractual obligations, or by Transparency-One for its convenience, Transparency-One shall refund to Subscriber, if applicable, the fees paid by Subscriber to Transparency-One for the remaining contractual period from the effective termination date to the end of the initial contractual subscription period.

13.4 Upon Subscriber’s written notice within thirty (30) days before the effective date of termination or expiration of the Agreement, Transparency-One may provide Subscriber with a commercial proposal in order to assist Subscriber in the recovery of its Data, under specific conditions defined between the Parties.

13.5 After such thirty (30)-day period, Transparency-One shall have no obligation to store or to provide Data and shall thereafter delete or destroy all copies of such Data stored in Transparency-One Server or otherwise in Transparency-One’s possession or control as provided in the Documentation, unless otherwise required by law.

13.6 Articles 7, 9, 10, 11, 12, 13, 15, 17, 18 and 19 of these GSTC and any other provisions or terms of the Agreement and all the provisions which should survive the expiration or termination of the Agreement by nature, shall remain applicable, for the term necessary to give them full force.

14 - Force Majeure

14.1 Neither Party shall have any liability for any failure or delay in performing any obligation under the Agreement, when such failure or delay is the exclusive result of the occurrence of a case of force
majeure as defined in article 1218 of the French Code civil and, by express agreement, in case of interruption of transportation facilities, of total or partial interruption or blockage of communication telecommunication or postal services, or in case of court-ordered liquidation of a supplier or subcontractor of Transparency-One, or of total or partial strikes (hereinafter “Case of Force Majeure”).

14.2 As soon as one Party has knowledge of the occurrence of a Case of Force Majeure, it shall notify the other Party in writing, it shall state the circumstances and information related to the Case of Force Majeure, and it shall take every measure reasonably necessary to limit its impact. The occurrence of a Case of Force Majeure shall first suspend, as of right, the execution of the Agreement, excluding Subscriber’s payment obligation which remains fully applicable. As soon as the impediment due to the Case of Force Majeure stops, the said obligations shall continue for the rest of the term of the Agreement extended by the duration of suspension. However, if the Case of Force Majeure event prevented the execution of the Agreement for longer than sixty (60) days, either Party may terminate the Agreement without giving prior notice and without liability, in accordance with article 13.2. If the impediment is permanent, the Agreement shall be terminated as of right and the Parties shall be released from their obligations, pursuant to articles 1351 and 1351-1 of the French Code civil.

15 - Compliance with laws and regulations

Each Party undertakes to comply with all applicable laws and regulations relating to their activities and the performance of the Agreement, in particular those relating to the environment, security, labour law and Personal Data.

16 - Assignment, Subcontracting

Subscriber shall not assign, sublicense or otherwise transfer to a third-party any of its rights and obligations under the Agreement, in whole or in part, either against payment or free of charge, without the prior written consent of Transparency-One.

Transparency-One is expressly authorized by Subscriber to assign or otherwise transfer its rights and obligations under the Agreement to any third party, without formalities; Transparency-One being then no longer liable to Subscriber under the Agreement, at the date of written notification of the considered operation to Subscriber, and will not be held jointly or severally liable for the execution of the Agreement by the assignee or transferee.

In addition, Subscriber expressly authorizes Transparency-one to subcontract any of its rights and obligations under the Agreement, including the processing of Personal Data to any third party of its choice, it being specified that Transparency-One shall be then solely responsible towards Subscriber, of all the obligations resulting from the Agreement and of the respect by such third party of its obligations as a processor under the GDPR.

17 - General provisions.

17.1 Relations between the Parties. The Parties acknowledge and agree they are independent contractors, both legally and financially, and that in no event shall the Agreement be considered to establish any mandate, franchise or any type of legal entity.

17.2 Language. The Agreement is written in English. In case of any translation thereof, only the English version shall have contractual value. Moreover, and except as otherwise expressly agreed, all communications between the Parties relating to the execution of the Agreement shall be made in English.
17.3 Non-waiver. The failure of either Party to invoke or belatedly invoke a breach by the other Party of any of its obligations under the Agreement shall not be construed as a waiver by such Party to exercise its rights for the breach in question or for any other breach. No waiver shall be effective unless made in writing and signed by a duly authorized representative of each Party.

17.4 Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable, as a result of any statutory or regulatory provision or after the decision of a competent court which has become final, the other stipulations of the Agreement shall not be affected and shall continue in full force and effect, unless the purpose of the Agreement is consequently affected. The Parties shall negotiate to amend or replace such provision by a provision that reflects as closely as possible what was agreed between the Parties, provided that such replacement provision is legally enforceable.

17.5 Notices. Unless otherwise expressly stated in the GSTC, all notices pertaining to the Agreement shall be sent by email to the address mentioned for each Party in the Registration Form. Each Party may add, delete or change the name of its representative or the address to which the notifications shall be sent to, at all times, by email to the other Party.

17.6 Exclusion of unforeseeability. The Parties declare measuring and accepting the inherent risks of the execution of the Agreement. By express agreement, the Parties hereby waive application of the provisions of article 1195 of the French Code civil.

17.7 Proof. Acceptance of the Agreement by electronic means shall have the same probative value between the Parties as a paper-based agreement. The digitized records of the Parties stored in the Parties’ data processing systems shall be kept in reasonable conditions of security, stored on reliable and durable carriers and shall be admitted as proof.

18 - Entire agreement - amendment

18.1 Subscriber expressly agrees that Transparency-One shall have the right to amend these GSTC at any time. Should Transparency-One amend these GSTC, Transparency-One (i) will expressly inform Subscriber’s representative of such changes by email to the address mentioned in the Registration Form; and/or (ii) shall post a notice on the welcome page of the Services indicating that the GSTC have been amended with a link to a description of the amendments. For a period of thirty (30) days after the amended GSTC are posted, the terms and conditions of the Agreement applicable prior to such notice shall continue to apply. Subscriber’s use of the Services after this period shall constitute Subscriber’s acceptance of and agreement to be bound by the amended terms and conditions of the Agreement.

18.2 The Agreement constitutes the complete and entire agreement between the Parties. It cancels and replaces all prior or simultaneous agreements and understandings, whether oral or written, relating to the subject matter of this Agreement. Unless otherwise stated in section 18.1, any change to the Agreement is subject to an amendment signed by a duly authorized representative of each Party.

19 - Governing law; jurisdiction

19.1 The Agreement shall be governed by and construed in accordance with French Law, without regard to any principles of conflict of law.

19.2 Except where a breach of the defaulting Party makes the contractual relation impossible to maintain, the Parties will try to reach an out-of-court settlement for any dispute arising out of or relating to the interpretation, the enforcement or the termination of the Agreement. In the event that the Parties cannot reach an amicable solution within fifteen (15) Business Days as from the delivery of
the corresponding notice by a Party to the other Party, the Parties irrevocably agree that the commercial Court of Paris shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter, except for any dispute regarding intellectual property rights, which shall be submitted to the exclusive jurisdiction of the “Tribunal de grande instance” of Paris, notwithstanding the plurality of defendants, claim against guarantor, summary or conservatory proceedings.