



# SENSING CLUES

## GENERAL TERMS AND CONDITIONS

### (GTC)

#### **BACKGROUND**

Sensing Clues provides its Partners internet access to all its Products and Services (as defined below), on an "as-is, where-is" basis, at a remote location via a Device (as defined below) with respect to the Purpose (as defined below).

The Partner wishes to use Sensing Clues' Products and Services in its business operations with respect to the Purpose.

Sensing Clues has agreed to provide, and the Partner has agreed to make use of Sensing Clues' Products and Services subject to these **General Terms and Conditions (GTC)**.

## AGREED TERMS

### 1. INTERPRETATION

The following definitions and rules of interpretation in this clause apply in these **General Terms and Conditions (GTC)**.

#### 1.1 Definitions:

“Agreement”: In case of a Free Subscription Package, the Agreement consists of the General Terms and Conditions only (this document). In all other cases, the Agreement consists of the Umbrella Agreement plus Annex 1 (General Terms and Conditions), Annex 2 (List of available Standard Services), Annex 3 (List Prices), and Statements of Work.

“Authorised Users”: those employees, agents, representatives, contractors and/or (business) partners of the Partner who are entitled to make use of Sensing Clues’ Products and Services under this Agreement, as further described in clause 2.2(a).

“Custom Work”: any activity carried out for the Partner which is not covered by the available Standard Services (Annex 2). This includes but is not limited to the setup of pilots, training, connecting custom data sources, and developing advanced analytical models and solutions.

“Device”: any computer, smartphone or device on which Sensing Clues Applications are installed, that at a minimum complies with the specifications and/or requirements, as indicated by Sensing Clues.

“Effective Date”: the date of the undersignment of the Agreement or the effective starting date of using the free versions of Cluey and Focus.

“Fair-use”: usage of the Sensing Clues systems and Services that falls within what can reasonably be expected. In the Pricing Model, fair-use limits are explicated. Above these limits, additional costs may apply (also available in the Pricing Model)

“Fees”: the fees payable to Sensing Clues for Subscribed services and Custom work.

“Maintenance”: any error corrections, updates and upgrades that Sensing Clues may provide or perform with respect to the Software and Services provided to the Partner under this Agreement.

“Partner”: an organisation which uses 1 or more of Sensing Clues’ Products and Services.

“Partner Data”: the data uploaded to the Platform and/or entered into the information fields of Sensing Clues’ applications by Authorised Users, or by Sensing Clues on the Partner's behalf.

“Platform”: a composition of technologies being developed by Sensing Clues and its Solution Partners, through which a Partner can access, download, install and/or run all Sensing Clues Applications.

“Products”: Applications, training materials and documentation.

“Project-area”: one or more areas within one (1) country that are managed by one (1) management team, branch, franchise holder, or other autonomic organisation,

represented by one (1) person who acts as Single Point of Contact (SPOC) for Sensing Clues

“Purpose”: the conservation of nature and the protection of wildlife.

“Sensing Clues Applications”: software (including hand-held apps, web-apps, and websites), algorithms, artificial intelligence) models, notebooks, and other solutions that are created and used to collect, store, analyse, or present Partner Data and/or data from third parties, that offer distinct functionality that can be used by Authorized Users in relation to the Purpose.

“Services”: the services that Sensing Clues provides to train, advise and support Authorised Users and to provide them access and use of the Platform, and to keep the Sensing Clues Platform and Applications up to date.

“Software”: proprietary software of Sensing Clues and/or its licensors in machine-readable object code form only, consisting of the Sensing Clues Platform and Applications, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Partner under this Agreement.

“Software Specification”: the functionality and performance specifications for the Sensing Clues Platform and Applications, as set out in Annex 2.

“Solution Partners”: contracted partners of Sensing Clues providing services to support the Purpose. These may include, but are not limited to software, hardware, and internet connectivity services, administrative and legal services, consultancy, support and development services.

“SPOC”: Single Point of Contact; an appointed Authorised User, formally introduced to Sensing Clues and mandated by Partner to discuss technical and functional issues on behalf of other Authorised Users. A SPOC may also be appointed from an affiliate organisation, if that organisation is working in the same area and collaborating with Partner towards the same Purpose.

“Virus”: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

“WITS”: alternative name of the Sensing Clues Platform.

## 2. SUPPORT SERVICES

2.1 Sensing Clues shall provide the Support Services to the Partner subject to the terms and conditions of this Agreement.

2.2 In relation to Authorised Users:

- (a) the Partner shall maintain a written list of current Authorised Users of the Software, and the Partner shall provide such list to Sensing Clues as may be reasonably requested by Sensing Clues from time to time;
- (b) the Partner shall ensure that each Authorised User keeps a secure password for his use of the Software, that such password is changed no less frequently than each month and that each Authorised User keeps his password confidential;
- (c) If such an audit reveals that individuals have access to passwords who are not Authorised Users, and without prejudice to Sensing Clues' other rights, the Partner shall promptly request Sensing Clues to disable such passwords and shall not issue any new passwords to such individuals.

2.3 In relation to the Software:

- (a) Sensing Clues hereby grants to the Partner, and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable right to allow Authorised Users to access the Sensing Clues Platform through the Support Services and to use the Software solely for the Purpose;
- (b) Sensing Clues hereby grants to the Partner on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable license to allow Authorised Users to download, install and run the Sensing Clues Applications on supported Devices and Operating Systems that Partner owns or controls solely for the Partner's business purposes;
- (c) the Partner shall not store, distribute or transmit any Virus, or any material through the Support Services that may actually or potentially hinder, impede or threaten the Purpose and/or is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (d) the Partner shall not and shall ensure that its Authorized Users shall not:
  - (i) use the Software in excess of contractual limitations on usage or in a manner that circumvents the limitations on usage or the technological measures to control access;
  - (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or timeshare or otherwise make any of the Software available for access by third parties except as otherwise expressly provided in the Agreement;
  - (iii) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by Agreement between the Parties; or
  - (iv) use the Software or Support Services to provide services to third parties; or

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- (v) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 2.3(d); and
  - (e) the Partner shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify Sensing Clues promptly of any such unauthorised access or use.
- 2.4 Sensing Clues does not accept any contractual or tortious responsibility and explicitly disclaims that the Software will meet Partner's needs, perform error-free or uninterrupted, or that Sensing Clues will correct all errors that may exist within the Software. The Software is licensed on an 'as-is, where-is' basis (In Dutch: op eigen bate en schade) and Sensing Clues expressly disclaims any and all contractual obligations or warranties, whether express or implied, including, without limitation, any non-infringement warranty and any implied warranties of merchantability, satisfactory quality, or fitness for a particular purpose. Clauses 7:17 and 7:21 Dutch Civil Code do not apply, to the extent that these would be applicable. Where determined to be needed in Sensing Clues sole discretion, Sensing Clues may perform Maintenance to the Software, during which the Software may not be accessible (in full).
- 2.5 If the Software does not conform with the Agreement, Sensing Clues will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly. If the non-conformity persists without relief more than thirty (30) days after written notice to Sensing Clues, then Partner may terminate the affected Support Services and Sensing Clues shall refund to Partner any prepaid Support Fees - if any - covering the remainder of the term of the affected Support Services after the date of termination. This clause 2.5 sets forth Partner's sole and exclusive right and remedy (and Sensing Clues' sole liability) in connection with any breach to provide the Support Services.
- 2.6 Where applicable, Sensing Clues will provide Maintenance as part of its Services as further described in Annex 2.
3. PARTNER DATA
- 3.1 The Partner shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Partner Data. The Partner guarantees that it and/or the applicable Authorized Users have all rights to any and all data that is generated or uploaded by the Authorized Users, and Partner will indemnify Sensing Clues in full with respect to any third Party claim and liability in that respect.
- 3.2 The use of the Software by the Partner and/or any of its Authorized Users may generate data (data collected and processed by the Partner, such as example given spreadsheets, tracker-data, maps, observations and alerts) ("Production Data") and which also contains system-related data (data related to configurations, use of functions, log-files, error files, IP addresses, user names, etc.) ("System-Related Data"). The use of such Production Data and System-Related Data is subject to the following:
- (a) Partner grants access to its Production Data to Administrators and Developers to facilitate software development, testing, and user support.

- (b) Production Data may be used by Sensing Clues and/or any scientific institutions contracted by Sensing Clues ("Academic Partners") for research and teaching projects, under the following conditions:
  - (i) The Partner will be requested for approval -in writing- and provide the details of the involved Academic Partners that Sensing Clues wishes to involve. Partner agrees that approval will not be reasonably withheld.
  - (ii) Production Data has been generated at least 6 months earlier;
  - (iii) Production Data has been anonymized and pseudonymized;
  - (iv) Sensing Clues will treat the Production Data confidentially and Scientific Partners, too, will be bound to obligations of confidentiality with regard to such Production Data;
  - (v) Research findings will be made available to the Partner upon its written request, which provision may be subject to conditions (of confidentiality); and
  - (vi) Sensing Clues and its Scientific Partners agree to adhere to any mandatory data privacy legislation that is applicable to such Production Data;
- (c) Notwithstanding the above, Sensing Clues may use any and all System-Related Data for data security purposes as well as to improve its Software and Services.

#### 4. PARTNER'S OBLIGATIONS

The Partner shall, and shall ensure that its Authorized Users shall:

- (a) use the Software and the Service in full compliance with the terms and conditions of this Agreement;
- (b) assign a SPOC to act as liaison between the Partner and Sensing Clues;
- (c) provide Sensing Clues with a short description of its organisation and its mission, which will be posted on the [sensingclues.org](https://sensingclues.org) website;
- (d) provide Sensing Clues at minimum with a yearly feedback about the use of, and experiences with its Products and Services;
- (e) support Sensing Clues in fundraising activities to pay for research and development, and control the costs for maintenance and support;
- (f) allow Sensing Clues to use the information under the aforementioned point c) and d) for external publication and to promote collaboration within the user community;
- (g) provide Sensing Clues with:
  - (i) all necessary cooperation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by Sensing Clues;

in order to render the Services, including but not limited to Partner Data, security access information and software interfaces to the Partner's other business applications - if needed;

- (h) provide personnel assistance, as may be reasonably requested by Sensing Clues from time to time;
- (i) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (j) carry out all other Partner responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Partner's provision of such assistance as agreed by the parties, Sensing Clues may adjust any timetable or delivery Schedule set out in this Agreement as reasonably necessary.
- (k) If this document is part of an Umbrella Agreement, comply with the non-disclosure agreement (NDA) as signed earlier.

## 5. CHARGES AND PAYMENT

- 5.1 The Partner shall pay annual Subscription Fees for maintenance, support, custom work, and further development of the Software without discount, withholding, right to set-off, and/or right to suspend (on the basis of articles 6:52 or 6:262 Dutch Civil Code or otherwise), within 15 days of the applicable invoice date ("Payment Term").
- 5.2 All amounts and fees stated or referred to in this Agreement are expressed in Euro and exclusive of value added tax, which shall be added to Sensing Clues' invoice(s) at the appropriate rate.
- 5.3 The prices indicated in Annex 3 (List Prices) and Statements of Work are subject to annual inflation adjustment, based on the most recent OECD Producer price indices (PPI) (<https://data.oecd.org/price/producer-price-indices-ppi.htm>). Review is effectuated at every 12th month of the effective date of this Agreement.
- 5.4 If Sensing Clues has not received payment within the Payment Term, and without prejudice to any other rights and remedies of Sensing Clues:
  - (a) Partner will be automatically in default (in Dutch: *verzuim*), without the need to send a notice of default (in Dutch: *ingebrekestelling*);
  - (b) Sensing Clues shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain wholly or partly unpaid.

## 6. INDEMNITY

- 6.1 The Partner shall defend, indemnify and hold harmless Sensing Clues against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in

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connection with the Partner's use of the Software or Services, including with respect to any data that is generated or uploaded through the Software, provided that:

- (a) the Partner is given prompt notice of any such claim;
- (b) Sensing Clues provides reasonable co-operation to the Partner in the defence and settlement of such claim, at the Partner's expense; and
- (c) the Partner is given sole authority to defend or settle the claim.

6.2 Sensing Clues shall defend the Partner, its officers, directors and employees against any claim that the Software infringes any copyright in the Netherlands, and shall indemnify the Partner for any amounts awarded against the Partner in judgement or settlement of such claims, provided that:

- (a) Sensing Clues is given prompt notice of any such claim;
- (b) the Partner provides reasonable co-operation to Sensing Clues in the defence and settlement of such claim, at Sensing Clues' expense; and
- (c) Sensing Clues is given sole authority to defend or settle the claim.

6.3 In the defence or settlement of the claim, Sensing Clues may obtain for the Partner the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Partner. Sensing Clues shall have no liability if the alleged infringement is based on:

- (a) a modification of the Software by anyone other than Sensing Clues; or
- (b) the Partner's use of the Software in a manner contrary to the instructions given to the Partner by Sensing Clues; or
- (c) the Partner's use of the Software after notice of the alleged or actual infringement from Sensing Clues or any appropriate authority.

6.4 The foregoing states the Partner's sole and exclusive rights and remedies, and Sensing Clues' entire obligations and liability, for copyright infringement.

## 7. COOPERATION

7.1 The Parties acknowledge that the success of the Purpose depends on proper and timely mutual cooperation. In order to facilitate the proper execution of the Agreement by Sensing Clues, Partner shall at all times provide Sensing Clues with all data or information that Sensing Clues deems to be useful, necessary and desirable in relation to the Purpose and/or the Agreement and to give its full cooperation in a timely manner.

7.2 If Partner fails to make the data, documents, hardware, software, materials or employees that Sensing Clues deems useful, necessary or desirable for the purpose of executing the Agreement available to Sensing Clues, then Sensing Clues is not liable for any resulting damage, errors or non-conformities and Sensing Clues shall be entitled to suspend the execution of the Agreement in part or in full.



## 8. PERSONNEL AND VOLUNTEERS

- 8.1 Parties may agree that with respect to the Purpose, Partner will make available personnel to Sensing Clues. Any personnel that is made available by Partner in relation to the performance of this Agreement ("Volunteers" within Sensing Clues), will be made available under the authority and supervision of Partner, which will not at any moment be qualified as an employment agreement with Sensing Clues in the sense of article 7:610 Dutch Civil Code or otherwise. Volunteer will continue to be an employee of Partner and the Agreement does not create any changes in Volunteer's legal position with Partner. No employment relation is created between Sensing Clues and Volunteer.
- 8.2 Any Volunteers are made available solely for the risk and account of Partner. Partner guarantees that its Volunteers have sufficient experience and expertise to perform the anticipated work. Partner is responsible for choosing the applicable Volunteer that it provides to Sensing Clues.
- 8.3 Partner guarantees Sensing Clues that it fully, timely and completely complies with all statutory requirements to which Partner should comply as an employer of the Volunteer (including but not limited to Act on work circumstances and working hours, Act on the employment of foreigners, Act on minimum wages, Act on employment and care, etc. or any foreign law equivalent). Partner indemnifies Sensing Clues in full for all actual and potential claims in this regard.
- 8.4 Partner guarantees that it will ensure that Volunteer will meet all rules and regulations applicable within the premises where Volunteer should work.
- 8.5 In deviation of anything contrary, Partner is responsible for and guarantees that in the performance of this Agreement, all obligations regarding the applicable taxes or premiums in accordance with the relevant tax and labour laws and regulations as well as value added taxes are timely and completely complied with towards the relevant authorities with regard to any employee that has been used in the performance of the Agreement.
- 8.6 Partner indemnifies Sensing Clues for all claims of tax authorities, social security authorities, pension insurers or pension funds regarding pension premiums, taxes, social security premiums, – including the employer's and employee's share – and penalties and interest in connection with or arising from the alleged claim of the entities that the temporary worker would have a (fictional) employment relation with Sensing Clues. At first request of Sensing Clues, Partner shall reimburse to Sensing Clues an amount equal to the taxes premiums, interest and penalties that are demanded by the relevant authorities, irrespective whether or not Sensing Clues objected against such taxes, premiums, interests or penalties.

8.7 In deviation of anything to the contrary in this Agreement, all damage including interest and costs that are incurred by Sensing Clues in connection with any alleged claims of the tax authorities or UWV (or any foreign law equivalent) as a result of Partner not complying with its payment obligations shall be reimbursed by Partner in full.

## 9. LIMITATION OF LIABILITY

9.1 This clause 9 sets out the entire liability of Sensing Clues (including any liability for the acts or omissions of its employees, agents and subcontractors) towards the Partner:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Partner of the Services and/or the Software
- (c) in respect of any use made by Sensing Clues or its Volunteers; and
- (d) in respect of any representation, misrepresentation, guarantee, statement or tortious act or omission, arising under or in connection with this Agreement.

9.2 Except as expressly and specifically provided in this Agreement:

- (a) the Partner assumes sole responsibility for results obtained from the use of the Software and the Services by the Partner, and for conclusions drawn from such use. Sensing Clues shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Sensing Clues by the Partner in connection with the Services, or any actions taken by Sensing Clues at the Partner's direction; and
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement. Clauses 7:17 and 7:21 Dutch Civil Code do not apply, to the extent that these would be applicable.

9.3 Nothing in this Agreement shall limit or exclude the liability of Sensing Clues for damage resulting from intent or wilful recklessness (in Dutch: opzet of bewuste roekeloosheid) of a Party or its managerial personnel.

9.4 Without prejudice to clause 9.3, Sensing Clues shall not be liable to the Partner, whether due to a breach of a warranty, breach of contract, or tort for any:

- (a) loss of profit;
- (b) loss of goodwill;
- (c) loss of business or business opportunity;
- (d) loss or corruption of data or information
- (e) loss of anticipated saving; or

- (f) special, indirect or consequential damage,

suffered by the Partner under or in connection with this Agreement.

- 9.5 Without prejudice to clause 9.3, Sensing Clues' total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the amount paid under the Agreement, or EUR [1.000,-- (thousand euros)], whichever amount is lower.

## 10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Effective Date and shall continue for the period of one year, unless otherwise terminated as provided in this clause 10. After one year, this Agreement shall automatically renew for subsequent one year periods, unless either Party notifies the other, in writing, at least 90 days before the end of the then current term.

- 10.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect and without incurring any liability for damages, costs and expenses by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [15] days after being notified in writing to make such payment;
- (b) Sensing Clues does no longer have the right to license the Software;
- (c) the other Party commits a breach of any term of this Agreement that justifies the termination of the Agreement and its consequences ("material breach") which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a reasonable period of at least 15 days after being notified in writing to do so;
- (d) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of the Dutch Insolvency Act;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);
- (g) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 10.3 Notwithstanding clause 10.2, either Party may terminate the Agreement for convenience (in Dutch: opzeggen) for any or no reason upon a 2 (two) weeks prior

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written notice to the other Party without incurring any liability for damages, costs and expenses.

10.4 On termination of this Agreement for any reason:

- (a) all rights and licences granted under this Agreement shall immediately terminate;
- (b) each Party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party;
- (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- (d) no obligation of either Party will come into existence to re-perform (undo) any and all obligations that have already been performed by either Party before the termination of the Agreement (in Dutch: *ongedaanmakingsverplichting*), as meant in article 6:271 Dutch Civil Code.

11. ENTIRE AGREEMENT

11.1 This Agreement, together with any documents referred to in it, constitutes the complete Agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. General terms and conditions of Partner are expressly excluded. Such general terms and conditions do not apply and are not incorporated into the Agreement, even if subsequent documentation should make reference to any such general terms and conditions. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. ASSIGNMENT

12.1 The Partner shall not, without the prior written consent of Sensing Clues, assign, transfer, or sub-contract all or any of its rights or obligations under this Agreement. Any assignment and or transfer in violation of the foregoing will be void and have no effect (and this provision will have property law effect (goederenrechtelijk effect)).

13. GOVERNING LAW AND CHOICE OF FORUM

13.1 This Agreement shall be governed by the laws of the Netherlands with exclusion of the United Nations Convention on Contracts for the International Sale of Products 1980 (CISG) and regardless of the conflict of law principles.

- 13.2 Any disputes arising from or in connection with this Agreement, tort, or otherwise shall be exclusively be referred to and finally resolved by arbitration in the English language and in accordance with the Arbitration Rules of the International Chamber of Commerce ("ICC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause, and by 1 (one) arbitrator to be appointed in accordance with the ICC Rules. The seat of arbitration shall be Amsterdam, the Netherlands. The procedural law of this seat shall apply where the ICC Rules are silent.