

Article 1 – Definitions

In these General Terms and Conditions, the following definitions shall have the meanings set out below:

- 1.1. General Terms and Conditions: these general terms and conditions of Odin Company bv.
- 1.2. Application: the software module developed by Odin and made available to the Client by means of the Cloud Service, known as "ODC" (Odin Development Compass) and/or "MC" (MatchConnector®), being a measurement instrument by which a person's unconscious motivations and conscious behaviour may be mapped, together with any additional software.
- 1.3. Availability: the period during which the Client actually has access to the Application by means of the Cloud Service.
- 1.4. Cloud Service: the making available and maintaining of the Application on a Server by Odin for the benefit of the Client, in exchange for payment.
- 1.5. User: a natural person who has been authorised by the Client to use the Application via the Portal.
- 1.6. Candidate/Test Participant: the natural person who actually undergoes an ODC assessment and whose personal data, including special categories of personal data within the meaning of Article 9 GDPR, are processed. The Candidate may, but need not, be the same person as the User.
- 1.7. Client: the (prospective) client of Odin who acts in the exercise of a profession or business and who enters into an Agreement with Odin, whether or not through the intermediary of a reseller or agent of Odin.
- 1.8. Odin: Odin Company bv, registered in the trade register of the Chamber of Commerce under number 57732590, established at Jonkerbosplein 52, (6534 AB) Nijmegen.
- 1.9. Agreement: the agreement concluded between Odin and the Client relating to the Cloud Service.
- 1.10. Personal Data: any data relating to a directly or indirectly identified or identifiable natural person, such as the User, Candidate or employees of the Client, who is processed in connection with the use of the Cloud Service.
- 1.11. Special Categories of Personal Data: personal data within the meaning of Article 9 GDPR, including psychometric test results that provide insight into the personality traits, behavioural patterns and unconscious motivations of Candidates.
- 1.12. Portal: the website via which the Client and the User may access and use the Cloud Service.
- 1.13. Server: a computer or interconnected group of computers and associated hardware ("cloud") managed by or on behalf of Odin, comprising web server equipment, the Application and supporting software and/or database software, accessible via the internet.
- 1.14. Access Credentials: the means, such as a token or combination of access code and username, by which access may be obtained to the Portal and the Application.
- 1.15. Data Processing Agreement: the agreement concluded between Odin and the Client concerning the processing of Personal Data in accordance with Article 28 GDPR, which forms an integral part hereof.

Article 2 – Applicability of the General Terms and Conditions

- 2.1 These general terms and conditions apply to all offers made by Odin, to all Agreements between Odin and the Client and to all services provided by Odin to the Client. The applicability of any general terms and conditions of the Client is hereby expressly excluded.
- 2.2 If any provision of these general terms and conditions is void or is declared void, the remaining provisions of these general terms and conditions shall remain in full force. In that event, the parties shall enter into consultation in order to agree new provisions to replace the void or annulled provisions, having regard as far as possible to the purpose and purport of the void or annulled provisions.
- 2.3 Odin may amend or supplement these general terms and conditions. Amendments shall also apply to Agreements already concluded, subject to a notice period of 30 days following written notification to the Client.
- 2.4 If an amendment is, by objective standards, unreasonably onerous for the Client, the Client shall have the right to terminate the Agreement with effect from the date on which the amendment enters into force, provided that the Client notifies Odin in writing within thirty (30) days of the announcement of the amendment. In that event, the Client shall not be liable for any fee in respect of the period following termination.
- 2.5 Amendments necessary in order to comply with legislation, regulations or orders of competent authorities may be implemented with immediate effect following notification to the Client.
- 2.6 Transfer of Rights and Obligations
 - 2.6.1 The Client is not entitled to transfer the Agreement or any rights and obligations arising therefrom, in whole or in part, to a third party, unless Odin has given prior written consent.
 - 2.6.2 Odin is entitled to transfer the Agreement, as well as any rights and obligations arising therefrom, in whole or in part, to an affiliated company or to a third party in the context of a (partial) transfer of its business, merger, demerger or transfer of shares.
 - 2.6.3 In the event referred to in clause 2.6.2, the rights and obligations of Odin under the Agreement shall pass by operation of law to the acquiring party. Odin shall notify the Client thereof in writing as soon as reasonably practicable.
 - 2.6.4 By agreeing to these General Terms and Conditions, the Client hereby grants in advance its co-operation to any contract novation as referred to in Article 6:159 of the Dutch Civil Code for the benefit of an acquiring party as referred to in clause 2.6.2.
 - 2.6.5 The co-operation referred to in clause 2.6.4 does not prejudice the requirement that the acquiring party may only assume the Agreement on unchanged terms, unless the Client expressly agrees in writing to any amendment of those terms.

Article 3 – Availability and Amendment of the Cloud Service and Application

3.1 Odin shall endeavour to ensure that the agreed Cloud Service functions properly at all times and shall aim for the highest possible availability, quality and security of the Cloud Service, with a target availability of 99.5% on an annual basis, excluding planned maintenance and force majeure events. These target figures constitute best-efforts obligations, not obligations of result.

3.2 Odin reserves the right to amend the technical and functional characteristics of the Application and the Cloud Service at any time in order to improve functionality, remedy defects or comply with applicable legislation and regulations. Odin is not obliged to maintain, amend or add specific features or functionalities of the Cloud Service or Application for the benefit of the Client specifically. Odin is entitled to implement temporary solutions, workarounds or problem-avoiding restrictions in the Application.

If amendments to the Application substantially alter or restrict its core functionality, Odin shall notify the Client at least forty-five (45) days in advance.

3.3 Odin shall endeavour to identify and remedy any defects in the Cloud Service. However, Odin cannot guarantee that all defects will be remedied. Odin classifies defects by severity (critical, high, medium, low) and applies the following target response times:

- Critical defects (system unavailable): within 4 hours
- High priority (core functionality impaired): within 24 hours
- Medium priority: within 5 working days
- Low priority: within 10 days

3.4 Odin reserves the right to take the Cloud Service temporarily out of use for the purpose of, amongst other things, maintenance, modification or improvement of Odin's computer systems. Odin shall endeavour to carry out such suspension outside normal office hours and shall notify the Client in advance of any planned suspension. Such a notified suspension of the Cloud Service shall not in any circumstances constitute a breach by Odin of its obligations to the Client.

3.5 The Client undertakes to use the Application solely:

- For purposes for which it has been validated and found suitable;
- In accordance with professional ethical guidelines (including the NIP Code and BIG regulations, where applicable);
- With due regard for the dignity, autonomy and privacy of Candidates;
- Not for selection or assessment purposes for which the Application has been explicitly declared unsuitable.

3.6 Security Measures

Odin shall implement and maintain appropriate technical and organisational measures to ensure the security of the Cloud Service and the Personal Data processed therein, including at a minimum:

- Encryption of data at rest (AES-256 or higher) and in transit (TLS 1.2 or higher);
- Logging of all access to Personal Data;
- Automated back-ups with geographical redundancy.

Article 4 – Access to the Cloud Service and Rules of Use

- 4.1 The Client is prohibited from using the Application and the Cloud Service in a manner that causes overloading and/or disruption to the application environment, making excessive automated calls to the Application and the Cloud Service, storing information in breach of applicable copyright legislation, damaging the reputation of Odin, and more generally from doing anything in connection with the Application and the Cloud Service that is contrary to Dutch or other applicable laws and regulations.
- 4.2 If, in Odin's opinion, any hindrance, damage or other danger arises for the functioning of Odin's or third parties' computer systems or network and/or for the provision of services via the internet — in particular through the excessive transmission of e-mail or other data, leakage of Personal Data or activities of viruses, Trojans and similar software — Odin is entitled to take all measures it reasonably deems necessary to avert or prevent such danger. Odin shall notify the Client thereof as soon as reasonably practicable and explain the measures taken.
- 4.3 Odin is entitled at all times to report any criminal offences identified to the competent authorities. Furthermore, Odin is entitled, upon a lawful order, to disclose names, addresses, IP addresses and other identifying data to the police or other competent parties. Odin shall notify the Client thereof after the event, unless prohibited by law or by order of a competent authority.
- 4.4 The Client is responsible for all use of the Cloud Service and the Access Credentials made available to it, whether or not with its consent. Odin shall not be liable for any loss suffered by the Client and/or third parties arising from unauthorised use of the Access Credentials.
- 4.5 The Access Credentials issued are non-transferable, strictly personal and for use exclusively within the Client's organisation. The Client shall exercise the requisite care in relation to the use of the Access Credentials and shall keep them confidential from third parties. The Client must immediately notify Odin of any suspected or actual loss, theft or unauthorised use of Access Credentials.
- 4.6 The Client may request Odin to block the Access Credentials. Odin is also entitled at all times to block Access Credentials of its own initiative if Odin becomes aware of unauthorised use of the Access Credentials or if there is a suspicion of a security incident. Odin shall not be liable in that event for loss suffered by the Client and/or third parties arising from the blocking of the Access Credentials. Odin shall notify the Client thereof immediately.
- 4.7 The Client shall ensure that all data which Odin indicates are necessary, or which the Client reasonably understands or ought to understand are necessary for the performance of the assignment, are made available to Odin in a timely manner and in the correct format. If the required information is not made available in a timely manner, Odin may suspend performance of the Agreement and charge the Client for any additional costs incurred, following prior written notice with a reasonable period for remedy.
- 4.8 Odin is not obliged to make back-up copies of data stored by the Client when using the Cloud Service, save for the automated back-ups made by Odin for system recovery as described in Article 3.6.1(f). These back-ups are intended solely for disaster recovery and are retained for a maximum period of 30 days. Any back-ups made may be destroyed at any time after a period of 90 days following termination of the Agreement.
- 4.9 Odin is not obliged to maintain a disaster recovery centre or other disaster recovery facilities for the purpose of providing the Cloud Service.
- 4.10 Specific Use Restrictions — Psychometric Data
The Client is expressly prohibited from:

- Reverse engineering, decompiling, analysing or reconstructing the Application, the underlying psychometric methodology, algorithms, scoring models, norm groups, item banks or validation studies;
- Using ODC and MC results, measurement instruments, methodologies or any component thereof for the development, validation or commercialisation of competing products, services or psychometric instruments;
- Publishing, disclosing, distributing or providing to third parties any test items, questionnaires, assessment materials or any component of the test methodology without the prior written consent of Odin;
- Deploying automated systems, bots, scrapers or other technical means for bulk extraction, systematic copying or automated downloading of data without the prior written consent of Odin;
- Modifying or adapting ODC and MC reports, results or output files, or presenting them as originating from other instruments or organisations;
- Publishing scientific validation studies, benchmark reports or other research in which the ODC or MC is the central subject without the prior written consent of Odin;
- Using the ODC or MC for purposes for which it has not been validated or for which it has been explicitly declared unsuitable;
- Selling, hiring, licensing or otherwise commercially exploiting access to the Portal or test materials to third parties without the express written consent of Odin;
- The prohibition on developing competing products shall include the use of ODC or MC data, reports or methodology as training data or benchmarks for AI models or other psychometric systems, unless Odin has given prior written consent.

4.10.1 Odin is entitled to implement technical and organisational measures to protect the integrity of the psychometric methodology and to prevent misuse, including but not limited to:

- Rate limiting (restriction of the number of requests per unit of time);
- Watermarking (digital watermarks in reports and output files);
- Forensic logging of all access to the Portal and data;
- Technical blocks against automated extraction;
- Monitoring of usage patterns and anomaly detection.

4.10.2 In the event of a breach of Article 4.10, the Client shall owe an immediately due contractual penalty of €25,000 per breach, without prejudice to Odin's right to:

- Full compensation if the actual loss is higher;
- Immediate termination of the Agreement;
- Immediate blocking of access to the Cloud Service;
- Legal proceedings, including the seeking of interim relief.

4.11 Audit and Monitoring Rights

Odin reserves the right, upon first request and subject to reasonable notice of at least 5 working days, to inspect the manner in which the Client uses, processes and stores the Application and the data obtained therefrom. Such inspection may consist of:

- Documentation relating to internal procedures and policies;
- Log files of use of the Application;
- Examples of reports and outputs provided to third parties;
- Information about persons having access to the Portal and their qualifications.

4.11.1 The Client grants Odin the right to carry out technical monitoring of usage patterns, access frequency and data flows in order to detect misuse, security incidents and breaches of these Terms and Conditions.

4.11.2 In the event of a reasonable suspicion of misuse, breach of intellectual property rights or security incidents, Odin is entitled to:

- Immediately suspend access to the Cloud Service;
- Carry out an emergency inspection;
- Conduct forensic examination of usage log files.

4.11.3 The Client is required to render full co-operation in audits and investigations. Failure to co-operate shall be deemed a material breach justifying dissolution.

4.12 Prohibition on Harmful Use

The Client is expressly prohibited from:

- Using ODC or MC results as the sole basis for decisions with far-reaching consequences (dismissal, rejection of a job application) without additional substantiation;
- Administering ODC or MC assessments under duress or without free and informed consent;
- Using results for purposes for which consent has not been granted;
- Sharing test results with unauthorised third parties;
- Discriminating against Candidates on the basis of test results in breach of equal treatment legislation.

Article 5 – Third-Party Applications

- 5.1 If and to the extent that Odin makes third-party software available to the Client in the performance of the Cloud Service, the conditions of those third parties shall apply in respect of that software, to the exclusion of the provisions agreed between Odin and the Client. The Client accepts the relevant third-party conditions.
- 5.2 If and to the extent that the relevant third-party conditions are, for whatever reason, held not to apply or are excluded from application in the relationship between the Client and Odin, the provisions agreed between Odin and the Client in respect of the use of the Cloud Service and the Software shall apply.
- 5.3 Odin cannot be held liable in respect of the use and maintenance of third-party software for more or on a different basis than applies in the relationship between Odin and its relevant supplier of that software.

Article 6 – Fees and Payment

- 6.1 The fees payable for the Cloud Service are set out in the Agreement itself. All prices are exclusive of value added tax and levies imposed by governmental authorities.
- 6.2 The Client and Odin agree that the fee shall be indexed annually on 1 January. The indexation shall be based on the Services Price Index (Dienstenprijsindex, DPI) for Computer Programming and Consultancy (CPA code J62, table 85817NED) published by Statistics Netherlands (CBS). The adjustment shall be calculated on the basis of the percentage change in the index figure over the twelve (12) months preceding the indexation date, relative to the preceding twelve (12) month period. If the index shows a negative movement, the Fee shall remain unchanged. If the aforementioned index is discontinued or ceases to be published, a comparable index published by CBS shall be used, to be determined by mutual agreement.
- Odin shall notify the Client in writing of any tariff adjustments at least 30 days in advance.
- 6.3 Payment of invoices issued by Odin must be made within 14 days of the invoice date, without deduction, discount or set-off. Objections to the amount of the invoice or complaints regarding the services shall not suspend the Client's payment obligation, unless the Client raises a reasoned objection within 7 days of the invoice date and communicates this to Odin in writing.
- 6.4 If a sum due is not paid within the payment period, statutory interest shall be payable on the outstanding invoice amount without further notice of default. Furthermore, in the event of late payment, the Client shall be liable, in addition to the sum owed and the interest accrued thereon, for full reimbursement of both extrajudicial and judicial collection costs, including the costs of solicitors, bailiffs and collection agencies. Extrajudicial collection costs shall amount to a minimum of 15% of the principal sum, with a minimum of €250.
- 6.5 A claim for payment shall become immediately due and payable in the event that the Client is declared bankrupt, applies for a moratorium on payments, has a general attachment levied on its assets, enters into liquidation or is dissolved.
- 6.6 In the event that the Client fails to pay sums due in a timely manner, Odin is entitled, following two written warnings, to block use of the Application and the Cloud Service entirely until the sums are paid. A minimum of ten (10) days must elapse between the two warnings.

Article 7 – Intellectual Property Rights

- 7.1 All intellectual property rights in all Applications, other software, documentation and other materials developed or made available in the context of the Cloud Services, on which any form of intellectual property may subsist, are vested exclusively in Odin or its licensors. Nothing in this Agreement may be construed as a transfer of any intellectual property right. The intellectual property rights in all materials made available to the Client in the context of the Agreement, including but not limited to quotations, analyses, models, designs, methodologies, software, training materials, user manuals, data files, educational materials and reports, as well as preparatory materials, logos, marks and trade names, are vested in Odin or its licensors.
- 7.2 As soon as the Client becomes aware that third parties are infringing the intellectual property rights of Odin, such as trade marks, patents, copyright, trade name rights, models or other intangible rights, the Client shall notify Odin thereof immediately and in any event within 5 working days. The Client shall provide Odin with all relevant information necessary to address the infringement. The Client shall be liable for any increase in loss resulting from failure to notify in a timely manner.
- 7.3 The Client shall obtain only the non-exclusive rights of use and entitlements as expressly and in writing granted in the Agreement or otherwise. The Client shall not reproduce, publish or alter the Applications, documentation and other materials developed or made available in the context of the Cloud Services in any other manner. The Client is not permitted to remove or alter any indication of copyright, trade marks, trade names or other intellectual property rights from Applications, other software, documentation and other materials developed or made available in the context of the Cloud Services, including indications as to the confidential nature and non-disclosure of the materials.
- 7.4 The Client is not entitled, independently or otherwise, to remedy defects in the Cloud Service software, to make modifications thereto, to transfer it to other hardware, to connect it with other hardware and software, to independently extend its functionality, to alter parameters and/or to remove security features.
- 7.5 The Client shall indemnify Odin against all claims by third parties in respect of:
- Materials made available by the Client to Odin that infringe the intellectual property rights of third parties;
 - Use of the Application by the Client in breach of these Terms and Conditions or applicable legislation;
 - Unlawful processing of personal data by the Client.
- 7.6 Odin shall indemnify the Client against claims by third parties alleging that the Application made available by Odin infringes an intellectual property right valid in the Netherlands, provided that the Client notifies Odin in writing without delay of such a claim and allows Odin to take the lead in the defence and any settlement. If it is irrevocably established by a court that there is an infringement, or if in Odin's opinion there is a reasonable likelihood thereof, Odin shall, at its own discretion and expense:
- a. acquire the right for the Client to continue using the Application; or
 - b. modify the Application such that it no longer constitutes an infringement; or
 - c. supply a functionally equivalent application; or
 - d. failing any of the foregoing, terminate the Agreement with repayment of the fees paid by the Client over the preceding three (3) months.

Any further liability or indemnification obligation of Odin for infringement of intellectual property rights is excluded, without prejudice to the limitations set out in Article 9.

Article 8 – Processing of Personal Data

8.1 Roles and Responsibility

In the performance of the Agreement, Odin processes Personal Data, including Special Categories of Personal Data within the meaning of Article 9 GDPR, on behalf of and under the responsibility of the Client. The Client is the "controller" for these processing operations and Odin qualifies as a "processor" within the meaning of the General Data Protection Regulation (GDPR).

8.2 Data Processing Agreement

The detailed arrangements between Odin and the Client with regard to the processing of Personal Data are set out in a separate Data Processing Agreement in accordance with Article 28 GDPR. This Data Processing Agreement forms an integral part of the Agreement. To the extent that provisions of these General Terms and Conditions differ from the Data Processing Agreement with regard to the processing of Personal Data, the Data Processing Agreement shall prevail.

8.3 Purposes and Legal Bases

The Client warrants to Odin that a valid legal basis exists for all processing of Personal Data taking place via the Cloud Service (such as the consent of the Candidate/Test Participant, performance of a contract or legitimate interest) and that the processing within the Application falls within the purposes determined by the Client.

8.4 Client's Instructions

Odin shall process Personal Data solely on the written instructions of the Client, save for deviating statutory obligations. If an instruction from the Client is, in Odin's opinion, contrary to the GDPR or other applicable privacy legislation, Odin shall notify the Client thereof as soon as reasonably practicable.

8.5 Security

Odin shall implement appropriate technical and organisational measures to ensure a level of security commensurate with the risk, including in any event (a) encryption of data at rest and in transit, (b) logging of access to Personal Data, (c) access controls on a need-to-know basis, and (d) automated back-ups with geographical redundancy, all as further elaborated in the Data Processing Agreement.

8.6 Sub-processors and Transfers

Odin is entitled to engage sub-processors in the processing of Personal Data, subject to the conditions set out in the Data Processing Agreement. To the extent that Personal Data are processed outside the European Economic Area, Odin shall ensure an adequate level of protection in accordance with the GDPR (for example, standard contractual clauses or an equivalent mechanism).

8.7 Data Subject Rights and Data Breaches

Odin shall, to the extent reasonably practicable, assist the Client in complying with requests from data subjects (including Candidates) and in fulfilling obligations in relation to data breaches, Data Protection Impact Assessments (DPIAs) and consultation with supervisory authorities, all in accordance with the Data Processing Agreement and subject to the conditions agreed therein.

8.8 Primacy of the GDPR

To the extent that the GDPR or other mandatory privacy legislation is contrary to these General Terms and Conditions, the relevant legislation shall prevail. This does not affect the allocation of risk and limitations on liability agreed between the parties in Article 9, to the extent legally permissible.

Article 9 – Liability

9.1 General Limitation of Liability

The total liability of Odin for an attributable failure in the performance of the Agreement or on any other legal basis, expressly including any failure to perform a warranty obligation agreed with the Client, is, per incident or series of related incidents, limited to compensation for direct loss up to a maximum of the amount that the Client, on average over a twelve (12) month period during the agreed term of the Agreement, owes to Odin by way of fees, with a minimum of €1,000 and a maximum of €25,000. The average for this twelve (12) month period shall be calculated over the entire term of the Agreement. This limitation of liability applies equally to any indemnification obligations of Odin.

9.2 The limitations and exclusions of liability set out in this Article do not affect:

- a. the liability of Odin for loss that is the direct result of an irrevocable fine imposed on Odin by a competent supervisory authority for an attributable breach of the GDPR, to the extent that such breach is attributable solely to Odin, which liability is limited to the maximum set out in Article 9.1;
- b. the indemnification obligation set out in Article 7 in respect of infringement of intellectual property rights of third parties.

9.3 Exclusion of Indirect Loss

Odin's liability for indirect loss is expressly excluded. Indirect loss includes:

- Consequential loss;
- Loss of profit and loss of savings;
- Loss of goodwill and reputational damage;
- Loss caused by business interruption;
- Loss resulting from claims by the Client's customers against the Client.

9.4 Direct loss shall mean solely:

- a. reasonable costs for establishing the cause and extent of the loss;
- b. reasonable costs incurred in ensuring that Odin's defective performance conforms to the Agreement, to the extent attributable to Odin;
- c. reasonable costs incurred to prevent or limit loss, to the extent the Client demonstrates that those costs resulted in a reduction of direct loss.

9.5 Any right to compensation shall be conditional on the Client notifying Odin of the loss in writing as soon as reasonably practicable and in any event within 30 days of its occurrence. Any claim for compensation against Odin shall lapse upon the mere expiry of twelve (12) months from the date on which the claim arose.

9.6 Duty to Mitigate Loss

The Client is obliged to:

- Take all reasonable measures to prevent or limit loss;
- Co-operate with remedial measures taken by Odin;
- Document loss in a timely and proper manner.

If the Client fails to comply with its duty to mitigate loss, Odin shall not be liable for loss that arose from or was increased by such failure.

9.7 The provisions of the preceding paragraphs and all other limitations and exclusions of liability set out in these Terms and Conditions shall also apply for the benefit of all (legal) persons engaged by Odin in the performance of the Agreement.

9.8 Client's Liability

The Client shall be liable to Odin for:

- Loss arising from use of the Cloud Service in breach of these Terms and Conditions;
- Loss arising from the provision of incorrect or incomplete information;
- Loss arising from unauthorised use of Access Credentials where the Client has failed to take adequate security measures;
- Claims by third parties (including Candidates) for unlawful processing of personal data by the Client.

The Client shall indemnify Odin fully against such claims and shall reimburse all reasonable costs (including legal assistance).

Article 10 – Force Majeure

10.1 Neither party is obliged to perform any obligation, including any warranty obligation agreed between the parties, if that party is prevented from doing so as a result of force majeure.

Force majeure shall include:

- Force majeure on the part of Odin's suppliers;
- Failure of suppliers prescribed by the Client to Odin to properly perform their obligations;
- Governmental measures (including lockdowns, export prohibitions and sanctions);
- Power outages;
- Disruption of internet, computer network or telecommunications facilities;
- (Civil) war, occupancy, strikes, general transport problems and terrorism;
- Natural disasters, pandemics and cyber-attacks on critical infrastructure.

10.2 Notification Obligations and Duration

The party relying on force majeure must:

- Notify the other party in writing without delay;
- Explain the nature and anticipated duration of the force majeure;
- Indicate which obligations are affected;
- Provide regular updates.

If the force majeure situation continues for more than 60 days:

- The other party shall have the right to dissolve the Agreement in whole or in part;
- Without any liability for compensation on the part of either party;
- Performance already rendered shall be settled on a pro rata basis.

10.3 Partial Force Majeure

If only a part of the obligations is affected by force majeure, the remaining obligations shall remain fully in force.

Article 11 – Confidentiality

11.1 Each party shall keep confidential all information received from the other party (in whatever form) and all other information relating to the other party of which it knows or may reasonably suspect that it is secret or confidential, or information the disclosure of which it may expect could cause damage to the other party, and shall take the necessary measures to ensure that its personnel keep such information confidential.

Confidential information shall in any event include:

- The psychometric methodology, algorithms, item banks and norm data of the ODC or MC;
- Test results and personal data of Candidates and Users;
- Business processes, know-how and commercial information of both parties;
- Financial information, contract terms and pricing arrangements;
- All information marked as "confidential".

11.2 The Client acknowledges that the Cloud Service and the Application are at all times of a confidential nature and that they contain trade secrets of Odin, its supplier or the producer of the software.

11.3 By way of exception to the first paragraph of this Article, Odin may, where it acts in its own right in civil or criminal proceedings, use information provided by the Client as well as other information of which it has taken cognisance in the performance of the Agreement, where in its opinion such information may be relevant to its defence.

11.4 The obligation of confidentiality set out in this Article does not apply to information that:

- Must be disclosed by the receiving party pursuant to a statutory obligation;
- Was already publicly available without breach of the confidentiality obligation;
- Was lawfully obtained from a third party without any confidentiality obligation;
- Was independently developed without use of confidential information.

If a party is required to disclose confidential information:

- It shall notify the other party thereof in advance (where permitted by law);
- Limit the disclosure to what is strictly necessary;
- Make reasonable efforts to preserve confidentiality.

11.5 The obligation of confidentiality described in this Article shall remain in full force following the termination of the Agreement for a period of 5 years, or longer if the information constitutes trade secrets or personal data that must remain confidential for a longer period.

11.6 Non-Disclosure Agreements

If the nature of the collaboration so requires, the parties may conclude a separate non-disclosure agreement (NDA) with more specific provisions. In the event of a conflict, the NDA shall prevail over this Article.

Article 12 – Duration, Termination and Consequences Thereof

- 12.1 The Agreement is entered into for a period of three years, unless the parties agree otherwise. The Agreement shall be tacitly renewed for successive periods of one year, unless the Client or Odin terminates the Agreement in writing by registered post or by e-mail with read receipt, subject to a notice period of three months before the end of the relevant period.
- 12.2 Each party is entitled to dissolve the Agreement for an attributable failure to perform if the other party is in attributable breach of its material obligations under the Agreement. Dissolution is only possible following a complete and detailed written notice of default, with a reasonable period of at least fourteen (14) days for remedying the breach.
- 12.2.1 Any payment obligation of the Client and all other obligations of co-operation by the Client or any third party to be engaged by the Client shall at all times be considered material obligations under this Agreement.
- 12.2.2 Material Breaches (without prior notice of default):
- The Agreement may be dissolved with immediate effect and without notice of default in the event of:
- Serious breach of confidentiality obligations;
 - Infringement of the intellectual property rights of the other party;
 - Serious breach of GDPR obligations causing demonstrable harm;
 - Bankruptcy, moratorium on payments or liquidation;
 - Fraud, wilful misconduct or gross negligence.
- 12.3 Performance already rendered under the Agreement at the time of dissolution as referred to above shall not be subject to unwinding, unless the Client demonstrates that Odin is in default in respect of a material part of that performance. In that event, the value of the performance already rendered by Odin for the Client shall (barring evidence to the contrary) be deemed equal to the fees already paid. Amounts invoiced by Odin prior to dissolution in connection with what Odin has already properly performed or delivered under the Agreement shall, subject to the foregoing, remain unconditionally due and payable and shall become immediately due and payable upon dissolution.
- 12.4 In addition to the provisions of Articles 2.3 and 2.4, the Client is entitled to terminate the Agreement prematurely if an amendment to these General Terms and Conditions is, by objective standards, unreasonably onerous for the Client and the parties have not reached a reasonable solution within thirty (30) days of notification.
- 12.5 Each of the parties may terminate the Agreement in whole or in part with immediate effect, in writing and without notice of default, if the other party is granted a (provisional) moratorium on payments, if bankruptcy proceedings are initiated against the other party, or if the other party's business is liquidated or wound up other than for the purpose of a business restructuring. Odin shall not be obliged to refund monies already received or to pay compensation in connection with such termination. In the event of the Client's bankruptcy, the right to use the Cloud Service and the Application shall lapse.

Article 13 – Disputes and Governing Law

13.1 The Agreement and these General Terms and Conditions shall be governed exclusively by Dutch law. Any disputes between the parties shall be submitted in the first instance exclusively to the competent court of the District Court of Gelderland, Arnhem location.

13.2 Mediation:

- Before commencing court proceedings, the parties undertake to make an attempt to settle the dispute amicably;
- If unsuccessful: to consider mediation in accordance with the MfN Mediation Rules of the Mediators Federation Netherlands (MfN);
- The costs of mediation shall be borne equally, unless the parties agree otherwise.

13.3 Exceptions to the Choice of Forum:

By way of exception to Article 13.1, Odin is entitled to:

- Commence proceedings before the competent court at the Client's place of domicile;
- Initiate interim injunction proceedings before any competent court;
- Take debt collection measures via competent authorities of its choice.

13.4 Applicability of the GDPR:

To the extent that the General Data Protection Regulation (GDPR) is applicable:

- The GDPR shall prevail over these General Terms and Conditions in the event of a conflict;
- Data subjects (Candidates) have the right to lodge a complaint with the Dutch Data Protection Authority (Autoriteit Persoonsgegevens);
- Data subjects may claim compensation in accordance with Article 82 GDPR.

Article 14 – Miscellaneous Provisions

- 14.1 If any provision of this Agreement proves to be void, this shall not affect the validity of the Agreement as a whole. In that event, the parties shall establish one or more new provisions to replace the void provision(s), following the intention of the original Agreement as closely as legally possible.
- 14.2 If Odin is required to carry out work in connection with data of the Client, its employees, Users or Candidates pursuant to a request or lawful order from a governmental authority or in connection with a statutory obligation, all associated costs shall be charged to the Client, unless the cause of the investigation lies with Odin. Odin shall notify the Client thereof in advance where reasonably practicable.
- 14.3 The version of any communication received or stored by Odin (including log files) shall be deemed authentic, subject to proof to the contrary by the Client.
- 14.4 The parties shall notify one another in writing within a reasonable period of any changes to their name, postal address, e-mail address, telephone number and, upon request, bank account details. Odin shall not be liable for the consequences of communications sent to outdated contact details if the Client has failed to communicate the change.
- 14.5 Communications and Notices:
All notices, terminations and communications must be made in writing:
- By registered post to the last known address; OR
 - By e-mail to the officially registered e-mail address with read receipt; OR
 - Via the secure messaging centre in the Portal (for operational communications).
- Notices shall be deemed received:
- By registered post: 3 working days after despatch;
 - By e-mail: upon receipt of the read receipt, or failing that, after 24 hours.
- 14.6 Entire Agreement:
These General Terms and Conditions, together with:
- The Agreement (main contract);
 - The Data Processing Agreement;
 - Fees and charges;
 - Any additional annexes;
- constitute the entire agreement between the parties. Earlier arrangements, representations or correspondence are superseded by these documents, unless expressly agreed otherwise in writing.
- 14.7 Order of Precedence in the Event of a Conflict:
In the event of a conflict between documents, the following order of precedence shall apply:
1. The Agreement (main contract);
 2. Fees and charges;
 3. Data Processing Agreement (for GDPR-related matters);
 4. These General Terms and Conditions;
 5. Annexes.
- 14.8 Future Legislation and Regulations:

If, following the conclusion of the Agreement, new legislation or regulations become applicable that require substantial changes to the services or cost prices:

- The parties shall consult on adjustment of the Agreement;
- Odin may implement reasonable cost adjustments following consultation with the Client;
- The Client shall have the right to terminate the Agreement if the adjustments are disproportionate.