

GENERAL TERMS AND CONDITIONS

Odin Company bv

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Article 1 - Definitions

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

- 1.1 Application: the software module developed by Odin and made available to the Client by means of the Cloud Service, named 'ODC' (Odin Development Compass) and/or 'MC' (MatchConnector®). ODC is the psychometric measurement instrument by which a person's unconscious Drives, talents and development potential are mapped. MatchConnector® is the platform that brings the depth of the ODC measurement to life: it offers coaches in-depth insight into their coachee and gives organisations insight into the fit between individual and context, on the basis of roles, functions and vacancies defined using the same psychometrics. The Application also comprises the Team Dynamics Feature, by which ODC profiles of multiple Data Subjects are presented and aggregated at team level, together with any further additional software.
- 1.2 Data Subject: the natural person whose Personal Data are processed in the context of the ODC measurement and/or the use of MatchConnector®. The term has the same meaning as in Article 4(1) GDPR.
- 1.3 Special Categories of Personal Data: Personal Data as referred to in Article 9 GDPR, including psychometric test results that provide insight into personality characteristics, behavioural patterns and unconscious Drives of Data Subjects.
- 1.4 Cloud Service: the making available and hosting by Odin, against payment, of the Application for the benefit of the Client on a Server.
- 1.5 Client: the (prospective) customer of Odin acting in the exercise of a profession or business and entering into an Agreement with Odin, whether or not through the intermediary of a reseller or agent of Odin.
- 1.6 Odin: Odin Company bv, registered in the commercial register of the Chamber of Commerce under number 57732590, having its registered office at (6534 AB) Nijmegen, Jonkerbosplein 52.
- 1.7 Agreement: the agreement as concluded between Odin and the Client relating to the Cloud Service.
- 1.8 Personal Data: any information relating to a directly or indirectly identified or identifiable natural person, such as the Data Subject or employees of the Client, that is processed when using the Cloud Service.
- 1.9 Portal: the website where the Client and the Data Subject can use the Cloud Service.
- 1.10 Server: a computer managed by or on behalf of Odin, or an associated group of computers and related hardware ("cloud"), carrying web server equipment, the Application and supporting software and/or database software, accessible by means of the internet.
- 1.11 Access Credentials: the means, such as a token or a combination of access code and username, by which access to the Portal and Application can be obtained.
- 1.12 GDPR Annex: the annex to the Agreement concerning the processing of Personal Data (Annex B) which — depending on the Application Context — sets out the specific allocation of roles, legal bases and responsibilities of the Parties as (independent or joint) controllers in accordance with the GDPR. The GDPR Annex forms an integral part of the Agreement.

Article 2 - Applicability of the General Terms and Conditions

- 2.1 These general terms and conditions apply to all offers by Odin, to all Agreements between Odin and the Client, and to all services that Odin provides to the Client. The applicability of any general terms and conditions of the Client is hereby expressly rejected.
- 2.2 If a provision of these general terms and conditions is void or is declared void, the remaining provisions of these general terms and conditions remain fully in force. The Parties will then enter into consultation in order to agree new provisions to replace the void or nullified provisions. In doing so, the purpose and intent of the void or nullified provisions will be taken into account as far as possible.
- 2.3 Odin may amend or supplement these general terms and conditions. Amendments also apply to Agreements already concluded, subject to a period of 30 days after written notification to the Client. Amendments to provisions of these General Terms and Conditions that relate to the processing of Personal Data and that deviate from or supplement the GDPR Annex require the written consent of the Client.
- 2.4 If, by objective standards, the amendment is unreasonably onerous for the Client, the Client is entitled to terminate the Agreement with effect from the date on which the amendment takes effect, provided that the Client notifies Odin thereof in writing within thirty (30) days of the amendment being announced. In that case, the Client owes no fee for the period after termination.
- 2.5 Amendments that are necessary in order to comply with laws or regulations or with orders of competent authorities may be implemented with immediate effect after 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 from it, in whole or in part, to a third party, unless Odin has given its prior written consent thereto.
 - 2.6.2 Odin is entitled to transfer the agreement, as well as the rights and obligations arising from it, in whole or in part, to a company affiliated with it or to a third party in the context of a (partial) transfer of its business, merger, demerger or share transfer.
 - 2.6.3 In the case referred to in paragraph 2.6.2, the rights and obligations of Odin under the agreement will pass to the acquiring party by operation of law. Odin will notify the Client thereof in writing as soon as possible.
 - 2.6.4 By agreeing to these General Terms and Conditions, the Client grants in advance its cooperation with any assumption of contract as referred to in Article 6:159 of the Dutch Civil Code for the benefit of an acquiring party as referred to in paragraph 2.6.2. "The cooperation granted in advance does not apply where the assumption of contract is accompanied by a material change of the contracting party that reasonably harms the interests of the Client.
 - 2.6.5 The cooperation referred to in paragraph 2.6.4 does not affect the fact that the acquiring party may only take over the agreement on unchanged terms, unless the Client expressly agrees in writing to a change of the terms.

Article 3 - Availability and modification of the Cloud Service and Application

- 3.1. Odin will use its best efforts to ensure that the agreed Cloud Service functions properly at all times and strives for the highest possible availability, quality and security of the Cloud Service, with a target availability of 99.5% measured on a rolling-12-month basis, excluding planned maintenance work and circumstances of force majeure as referred to in Article 10. These target figures do not constitute an obligation to achieve a result, but obligations to use best efforts.
- 3.2. Odin reserves the right to modify the technical and functional properties of the Application and the Cloud Service from time to time, in order to improve functionality and to remedy any errors or to comply with applicable laws and regulations. Odin is not obliged to maintain, modify or add particular properties or functionalities of the Cloud Service or Application specifically for the Client. Odin is entitled to introduce temporary solutions or program work-arounds or problem-avoiding restrictions in the Application.

If changes to the Application substantially alter or limit the core functionality, Odin will inform the Client thereof at least thirty (30) days in advance.

- 3.3. Odin will use its best efforts to detect and remedy any errors in the Cloud Service. However, Odin cannot guarantee that all errors will be remedied. Odin classifies errors by severity (critical, high, medium, low) and applies the following target response times:
- Critical errors (system unavailable): within 4 hours
 - High priority (core functionality limited): 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 purposes of, among other things, maintenance, adjustment or improvement of Odin's computer systems. Odin will, as far as possible, carry out any such suspension outside office hours and will notify the Client in advance of the planned suspension. Such an announced suspension of the Cloud Service is in no event to be regarded as a failure by Odin in the performance of its obligations towards 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 (such as the NIP code and, where applicable, the BIG regulations);
 - With respect for the dignity, autonomy and privacy of Data Subjects;
 - Not for selection or assessment purposes for which the Application has been expressly declared unsuitable.
- 3.6. Security measures
- Odin implements and maintains appropriate technical and organisational measures to safeguard the security of the Cloud Service and the Personal Data processed therein. In doing so, Odin also focuses on the ten minimum areas of attention referred to in Article 21 of the NIS2 Directive (respectively the Cybersecurity Act), including at least:
- 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 geographic redundancy;
 - Multi-factor authentication (MFA) via a TOTP authenticator app;
 - Patch management: timely installation of security updates on all systems;
 - Supply chain security: assessment of the cybersecurity risks of sub-processors upon selection and throughout the collaboration;
 - Business continuity planning (BCP) and disaster recovery (DRP): a documented and periodically tested recovery plan;
 - Awareness and training of employees in the field of information security;
 - Access management on the basis of need-to-know and least privilege;
 - Vulnerability management and penetration testing on critical systems.

Odin carries out an annual risk analysis of its network and information systems and adjusts its security measures accordingly.

For its services, Odin applies measures aligned with the Baseline Information Security Government 2 (BIO2) and the underlying ISO/IEC 27001:2022 and ISO/IEC 27002:2022 standards. Clients who, on the basis of a statutory obligation or procurement policy, must demonstrate that their cloud service provider meets BIO2-relevant security requirements may invoke the audit rights set out in Articles 4.13-4.16 and the Infrastructure Declaration (Annex E).

Article 3a – Use of Artificial Intelligence (AI)

- 3a.1 In the provision of its services, Odin makes use of artificial intelligence (AI) systems to support descriptive texts and reports.

- 3a.2 Odin's use of AI concerns the generation of descriptive, explanatory or summarising texts on the basis of the standard psychometric output of the ODC measurement or MatchConnector® and the context information supplied by the Client. The generated texts are stored in MatchConnector® and are accessible to the Client and, where applicable, to the Data Subject. Examples of AI applications are (non-exhaustive): the generation of vacancy texts on the basis of a match profile drawn up by the Client, the drafting of interview questions tailored to a candidate's ODC profile, the formulation of training recommendations, explanations of L&D plans and career planning proposals. Odin reserves the right to expand the range of AI applications, provided that this fits within the same purpose and legal basis as described in the GDPR Annex (Annex B).
- 3a.3 The AI system has no influence on the psychometric measurement itself, on the calculation of ODC profiles, Connectors or Matching Results. These are determined solely by Odin's validated psychometric methodology. The standard psychometric output is the input for the AI system; the AI does not edit or alter this output, but uses it as the basis for generating descriptive texts. The retention period of AI-generated texts is laid down in the GDPR Annex (Annex B, Article 10). The Data Subject may request erasure of AI-generated texts in accordance with the rights referred to in Article 9 of the GDPR Annex.
- 3a.4 The Client is informed when a text provided by Odin has been generated (in whole or in part) with the aid of AI. Odin ensures an appropriate level of transparency in accordance with the applicable transparency obligations of the AI Act (Regulation (EU) 2024/1689), including Article 50.
- 3a.5 The AI-generated texts are aids and not a substitute for human assessment. The Client remains responsible at all times for the use of AI-generated texts in its decision-making.

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 such a way that this leads to overloading and/or disruptions of the application environment, from making excessive automated calls to the Application and the Cloud Service, from storing information in breach of relevant copyright legislation, from harming the good name 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, nuisance, damage or another danger arises for the functioning of the computer systems or the network of Odin or third parties and/or of the provision of services via the internet, in particular through the excessive sending of email or other data, the leaking of Personal Data or the activities of viruses, Trojans and similar software, Odin is entitled to take all measures that it reasonably deems necessary to avert or prevent this danger. Odin will notify the Client thereof as soon as possible and will explain the measures taken.
- 4.3 Odin is at all times entitled to report any criminal offences it establishes. Furthermore, Odin is entitled, upon a proper order, to hand over name, address, IP address and other identifying data to the police or other competent parties. Odin will notify the Client thereof afterwards, unless this is prohibited by law or by a competent authority.
- 4.4 The Client is responsible for any use, with or without its consent, of the Cloud Service and of the Access Credentials made available to it. Odin is not liable for any damage suffered by the Client and/or third parties arising from unauthorised use of the Access Credentials.
- 4.5 The Access Credentials provided are non-transferable, strictly personal and solely for use within the Client's organisation. The Client will exercise the requisite care with regard to the use of the Access Credentials and will keep them secret from third parties. The Client must immediately report to Odin 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 on its own initiative if Odin is aware of unauthorised use of the Access Credentials or if there is a suspicion of a security incident. In that case, Odin is not liable for any damage suffered by the Client and/or third parties arising from the blocking of the Access Credentials. Odin will notify the Client thereof immediately.
- 4.7 The Client will ensure that all data which Odin indicates are necessary, or which the Client reasonably understands or ought to understand to be necessary for carrying out the assignment, are made available to Odin in good time and in the correct format. If the required information has not been made available in good time, Odin may suspend performance of the agreement and charge any additional costs to the Client after prior written warning 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 that Odin makes for system recovery as described in Article 3 of these General Terms and Conditions. These back-ups are intended solely for emergency recovery and are retained for a period of no more than 30 days. Any back-ups made may be destroyed at any time after a period of 90 days following termination of the Agreement. This Article does not affect Odin's obligation to provide, at the request of the Client — submitted within thirty (30) days of termination of the Agreement — non-psychometric organisational data (such as vacancy profiles and organisational structure data) in accordance with the GDPR Annex (Annex B, Article 13(2)).
- 4.9 Odin is not obliged, for the purpose of performing the Cloud Service, to have a fall-back centre or other fall-back facilities.
- 4.10 Specific restrictions on the use of 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 part thereof for the development, validation or commercialisation of competing products, services or psychometric instruments;

- Disclosing, publishing, distributing or providing to third parties any test items, questionnaires, assessment materials or any part 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 central without the prior written consent of Odin;
 - Using the ODC or MC for purposes for which it has not been validated or has been expressly found unsuitable;
 - Selling, renting, licensing or otherwise commercially exploiting access to the Portal or test materials towards third parties without the express written consent of Odin.
 - The prohibition on developing competing products also includes the use of ODC or MC data, reports or methodology as training data or a benchmark for (AI) models or other psychometric systems, unless Odin has given its 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 improper use, including but not limited to:
- Rate limiting (limiting 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 barriers 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 owes an immediately payable contractual penalty of € 50,000 (fifty thousand euros) per breach and per day that the breach continues, without prejudice to Odin's right to:
- Full compensation if the actual damage is higher;
 - Immediate termination of the Agreement;
 - Immediate blocking of access to the Cloud Service;
 - Legal action, including seeking interim relief.
- 4.11 Audit and monitoring rights
- Odin reserves the right, upon first request and subject to a reasonable notice period of at least 5 working days, to obtain insight into the manner in which the Client uses, processes and stores the Application and the data obtained from it.
- This insight may consist of:
- Documentation on internal procedures and policy;
 - Log files of use of the Application;
 - Examples of reports and outputs provided to third parties;
 - Information on persons who have 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 improper use, security incidents and breaches of these Terms and Conditions.
- 4.11.2 Where there is a well-founded suspicion of improper use, infringement of intellectual property rights or security incidents, Odin is entitled to:
- Immediately suspend access to the Cloud Service;
 - Carry out an urgent inspection;
 - Conduct a forensic investigation of usage log files.
- 4.11.3 The Client is obliged to provide full cooperation with audits and investigations. Non-cooperation is regarded as a material failure justifying rescission.
- 4.12 Prohibition of 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 measurements under coercion or without free consent;

- Using results for purposes for which no consent has been given;
- Sharing test results with unauthorised third parties;
- Discriminating against Data Subjects 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 course of performing the Cloud Service, the terms and conditions of those third parties apply with regard to that software, setting aside what has been agreed between Odin and the Client. The Client accepts the said third-party terms and conditions. The third-party terms and conditions apply only in so far as they are not contrary to the GDPR Annex (Annex B) and applicable privacy legislation.
- 5.2 If and to the extent that the said third-party terms and conditions are, for whatever reason, deemed not to apply or are declared inapplicable in the relationship between the Client and Odin, the provisions agreed between Odin and the Client concerning the use of the Cloud Service and the Software apply.
- 5.3 In respect of the use and maintenance of third-party software, Odin can never be held to more or otherwise 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 turnover tax and levies imposed by the authorities.
- 6.2 The Client and Odin agree that the fee is indexed annually as at 1 January. The indexation takes place on the basis of the Services Producer Price Index (DPI) for Computer programming, consultancy (CPA code J62, table 85817NED) published by Statistics Netherlands (CBS). The adjustment is calculated on the basis of the percentage change in the index figure over the twelve (12) months preceding the indexation date, compared with the preceding period of twelve (12) months. If the index shows a negative development, the Fee remains unchanged. In the absence or discontinuation of the aforementioned index, a comparable index published by CBS will be used, to be determined by mutual agreement.
- Odin will inform the Client in writing at least 30 days in advance of any rate adjustments.
- 6.3 Objections to the amount of the invoice or complaints about the services do not suspend the Client's payment obligation, unless the Client raises a reasoned objection within 14 days of the invoice date and notifies Odin thereof in writing.
- 6.4 If an amount owed is not paid within the payment term, the statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code is owed on the outstanding invoice amount without further notice of default. In addition, in the event of late payment, the Client is obliged, over and above the amount owed and the interest accrued thereon, to pay full compensation for both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies. Extrajudicial collection costs amount to at least 15% of the principal sum, with a minimum of € 250.
- 6.5 A claim for payment is immediately due and payable if the Client is declared bankrupt, applies for a suspension of payments, has a general attachment levied on its assets, goes into liquidation or is dissolved.
- 6.6 If the Client fails to pay amounts owed in good time, Odin is entitled to block access to the Application and the Cloud Service in accordance with the following procedure:
- (i) After expiry of the payment term, Odin sends a first written payment reminder (first warning);
 - (ii) If no payment has been received after at least ten (10) days following the first warning, Odin sends a second written warning announcing blocking;
 - (iii) If payment is still not made after the second warning, Odin is entitled to block access with immediate effect until the amount owed has been paid in full.

Article 6a – Adjustment of the number of licences

- 6a.1 This Article applies solely to the User licences (Named User) invoiced on a recurring (monthly or annual) basis. These include the ODC-Professional licences and the MatchConnector licences. MatchConnector licences are understood to mean all recurring User licences that provide access to MatchConnector®, including the MC-Adviser licence and any future MatchConnector licence forms that Odin introduces. One-off items, including the set-up of the Hub, Team Dynamics and training courses, do not fall under this Article.
- 6a.2 (Reassignment) A licence that becomes available because a user leaves employment or changes role within the Client's organisation may be reassigned by the Client, free of charge, to another user within its organisation. Reassignment does not count as a reduction within the meaning of this Article and does not affect the number of licences taken up or the Fee.
- 6a.3 (Right to scale down) The Client is entitled to reduce the number of licences taken up per licence type by at most the greater of (a) ten per cent (10%) of the number of that licence type agreed at the start of the current contract period, rounded down to whole licences, or (b) one (1) licence, per contract year.

- 6a.4 (Lower limit) Notwithstanding the provisions of paragraph 6a.3, the number of licences taken up per licence type will not, during the current contract period, fall below eighty per cent (80%) of the number agreed at the start of that period. In addition, for as long as the Client makes use of Application Context B (joint controllership, Article 26 GDPR), at least one (1) MatchConnector licence remains in place that provides access to drawing up a Reference Framework as referred to in the GDPR Annex (Annex B).
- 6a.5 (Commencement date and procedure) A reduction takes effect solely on the annual anniversary of the commencement date of the Agreement. The Client notifies Odin thereof in writing at least one (1) month before that anniversary. A reduction has no retroactive effect and gives no right to a refund over periods already elapsed or in progress.
- 6a.6 (Renewal) In the event of tacit renewal of the Agreement, the number of licences per licence type applicable at the start of the new period counts as the agreed number for the purposes of paragraphs 6a.3 and 6a.4.
- 6a.7 (Further adjustment) A reduction exceeding that provided for in this Article is possible solely with the prior written consent of Odin. An increase in the number of licences is possible at all times and is governed by Annex A and, for the GDPR consequences, by Article 3a of the GDPR Annex (Annex B).

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 in which any form of intellectual property may vest rest exclusively with 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 material made available to the Client in the context of the Agreement, including but not limited to quotations, analyses, models, designs, methodologies, software, training material, user manuals, data files, educational material and reports, as well as preparatory material, logos, trade marks and trade names, rest with Odin or its licensors.
- 7.2 As soon as the Client establishes that third parties are infringing the intellectual property rights of Odin, such as trade marks, patents, copyrights, trade name rights, designs or other intangible rights, the Client will notify Odin thereof immediately, but no later than within 5 working days. The Client will provide Odin with all relevant information necessary to address the infringement. The Client is liable for any increase in damage resulting from late notification.
- 7.3 The Client acquires solely the non-exclusive rights of use and powers as expressly and in writing granted in the Agreement or otherwise. The Client will not otherwise reproduce, disclose or modify the Applications, documentation and other materials developed or made available in the context of the Cloud Services. The Client is not permitted to remove or alter any indication concerning copyrights, trade marks, trade names or other intellectual property rights from the Applications, other software, documentation and other materials developed or made available in the context of the Cloud Services, including indications concerning the confidential nature and secrecy of the materials.
- 7.4 The Client is not entitled to independently (have) remedy errors in the software of the Cloud Service, to make adjustments to it, to transfer it to other equipment, to link it with other equipment and software, to independently extend the functionality, to change parameters and/or to remove security features.
- 7.5 The Client indemnifies Odin against all third-party claims relating to:
- Materials made available by the Client to Odin that infringe the intellectual property rights of third parties;
 - The Client's use of the Application in breach of these Terms and Conditions or applicable legislation;
 - Unlawful processing of Personal Data by the Client.
- 7.6 Odin indemnifies the Client against third-party claims alleging that the Application made available by Odin infringes an intellectual property right valid in the Netherlands, provided that the Client informs Odin without delay in writing of any such claim and allows Odin to take the lead in the defence and any settlement. If it is irrevocably established in law that there is an infringement, or if in Odin's opinion there is a fair chance thereof, Odin will, at its own discretion and at its own expense:
- a. acquire the right for the Client to continue using the Application; or
 - b. modify the Application in such a way that there is no longer any infringement; or
 - c. supply a functionally equivalent application; or
 - d. failing that, terminate the Agreement with repayment of the fees paid by the Client over the last three (3) months.

Any further liability or indemnification obligation of Odin on account of infringement of intellectual property rights is excluded, without prejudice to the limitations of Article 9.

Article 8 - Processing of Personal Data

8.1 Roles and responsibility

In performing the Agreement, Odin processes Personal Data, including Special Categories of Personal Data as referred to in Article 9 GDPR, as an independent controller within the meaning of Article 4(7) GDPR. Odin independently determines the purposes and means of the processing within the ODC platform and MatchConnector®. The Client likewise qualifies as an independent controller for the processing operations it carries out with the measurement results and Matching Results provided by Odin. In so far as, when using MatchConnector®, there is joint controllership as referred to in Article 26 GDPR, the allocation of responsibilities is laid down in the GDPR Annex (Annex B).

8.2 GDPR Annex

The arrangements between Odin and the Client with regard to the processing of Personal Data are laid down in the GDPR Annex (Annex B). The GDPR Annex forms an integral part of the Agreement. In so far as provisions in these General Terms and Conditions deviate from the GDPR Annex with regard to the processing of Personal Data, the GDPR Annex prevails.

8.3 Purposes and legal bases

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

8.4 Instructions of the Client

Odin processes Personal Data on the basis of its own, independently determined processing purposes and legal bases, as laid down in the GDPR Annex (Annex B) and the Privacy Statement (Annex D). The Parties inform each other of material changes to their processing operations that affect the joint provision of services. Odin is not obliged to follow instructions of the Client as to the manner in which it processes Personal Data, unless this arises from a joint processing arrangement as referred to in Article 26 GDPR.

8.5 Security

Odin takes appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including in any event (a) encryption of data at rest and in transit, (b) logging of access to Personal Data, (c) access control on a need-to-know basis, and (d) automated back-ups with geographic redundancy, all as further set out in the GDPR Annex.

8.6 Sub-processors and transfers

Odin is entitled to make use of sub-processors when processing Personal Data, subject to the conditions set out in that regard in the GDPR Annex. In so far as Personal Data are processed outside the European Economic Area, Odin will ensure an appropriate level of protection in accordance with the GDPR (for example standard contractual clauses or an equivalent mechanism).

8.7 Rights of data subjects and personal data breaches

Odin provides the Client, in so far as this is reasonably possible, with support in meeting requests from Data Subjects and in complying with obligations relating to personal data breaches, DPIAs and consultation with supervisory authorities, all in accordance with the GDPR Annex and on the terms agreed therein.

8.8 Precedence of the GDPR

In so far as the GDPR or other mandatory privacy legislation conflicts with these General Terms and Conditions, the legislation in question prevails. This does not affect the allocation of risk and the limitations of liability agreed between the Parties in Article 9, in so far as these are legally permissible.

Article 9 - Liability

9.1 General limitation of liability

The total liability of Odin towards the Client for direct damage over any calendar year is limited to the amount paid to Odin by the Client under the Agreement in the twelve (12) months preceding the event causing the damage, with an absolute maximum of € 25,000 (twenty-five thousand euros) per liability claim and per year. This maximum does not apply to fines imposed on Odin by the AP for Odin's own breach of the GDPR.

9.1a Increased tiered maximum liability (if agreed in Annex A)

By way of derogation from the maximum referred to in Article 9.1, if agreed in Annex A (Prices and Rates), the following maximum liability per liability claim and per year applies, linked to the annual licence fee:

- Licence fee up to € 10,000 per year: maximum € 25,000 (standard);
- € 10,001 – € 25,000 per year: maximum € 50,000;
- € 25,001 – € 50,000 per year: maximum € 100,000;
- € 50,001 – € 100,000 per year: maximum € 150,000;
- more than € 100,000 per year: maximum € 200,000.

The applicable maximum is laid down per Agreement in Annex A. For the rest, the limitations and exclusions of liability set out in Article 9 apply in full.

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

- a. the liability of Odin for damage that is the direct result of an irrevocable fine imposed on Odin by a competent supervisory authority for an attributable breach of the GDPR, in so far as this breach can be attributed solely to Odin, which liability is limited to the maximum referred to in Article 9.1;
- b. the indemnification obligation set out in Article 7 in the event of infringement of the intellectual property rights of third parties.

9.3 Exclusion of indirect damage

The liability of Odin for indirect damage is expressly excluded. Indirect damage is understood to include in any event — but not exclusively —:

- a. Consequential damage;
- b. Lost profits and missed savings;
- c. Reduced goodwill and reputational damage;
- d. Damage due to business stagnation;
- e. Damage as a result of claims by the Client's customers against the Client;
- f. Damage as a result of loss, corruption or damage of data;
- g. Costs of recovery or replacement of systems or data.

The above enumeration is not exhaustive. Other forms of damage that do not directly result from the event causing the damage are also regarded as indirect damage within the meaning of this Article.

9.4 Direct damage is understood to mean solely:

- a. reasonable costs incurred to determine the cause and extent of the damage;
- b. reasonable costs incurred to bring Odin's defective performance into conformity with the Agreement, in so far as attributable to Odin;
- c. reasonable costs incurred to prevent or limit damage, in so far as the Client demonstrates that these costs led to a limitation of direct damage.

9.5 A condition for the accrual of any right to compensation is always that the Client reports the damage to Odin in writing as soon as possible, but no later than within sixty (60) days of its occurrence. Any claim for compensation against Odin lapses by the mere passage of twelve (12) months after the accrual of the claim. This reporting period does not affect the obligation of each Party to report breaches of the security of personal data in accordance with the time limits of the GDPR (Articles 33 and 34 GDPR) and the GDPR Annex (Annex B, Article 8). In the event of concurrence, the shortest statutory time limit prevails.

9.6 Duty to mitigate damage

The Client is obliged:

- To take all reasonable measures to prevent or limit damage;
- To cooperate with recovery measures by Odin;
- To document damage in good time and properly.

If the Client fails to comply with the duty to mitigate damage, Odin is not liable for damage that has arisen or been increased as a result.

9.7 The provisions of the preceding paragraphs, as well as all other limitations and exclusions of liability referred to in these Terms and Conditions, also apply for the benefit of all (legal) persons that Odin uses in performing the Agreement.

9.8 Liability of the Client

The Client is liable towards Odin for:

- Damage arising from use of the Cloud Service in breach of these Terms and Conditions;
- Damage due to the provision of incorrect or incomplete information;
- Damage due to unauthorised use of Access Credentials where the Client has taken insufficient security measures;
- Third-party claims (including from Data Subjects) on account of unlawful processing of Personal Data by the Client.

The Client is liable towards Odin for the damage referred to above and fully indemnifies Odin against such claims and reimburses all reasonable costs (including legal assistance), on the understanding that the total liability of the Client towards Odin under this Article per event and per year is limited to twice the annual licence fee that the Client paid to Odin in the twelve (12) months preceding the event causing the damage. This limitation does not apply to claims arising from intent or wilful recklessness of the Client or its managers, or to claims by Data Subjects on account of unlawful processing of personal data by the Client.

9.9 The limitations and exclusions of liability in this Article do not apply to damage that is the direct result of intent or wilful recklessness of Odin or its managers.

Article 10 - Force majeure

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

Force majeure is also understood to include:

- Force majeure of Odin's suppliers;
- The improper performance of obligations by suppliers prescribed to Odin by the Client;
- Government measures (including lockdowns, export bans, sanctions);
- Power failure;
- Failure of internet, computer network or telecommunications facilities;
- (Civil) war, occupation of the workplace, strike, general transport problems and terrorism;
- Natural disasters, pandemics, cyberattacks on critical infrastructure.

10.2 Duty to notify and duration

The Party invoking force majeure must:

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

If the force majeure situation lasts longer than 60 days:

- The other Party is entitled to rescind the Agreement in whole or in part;
- Without any obligation to pay compensation for either Party;
- Performances already rendered are settled on a pro rata basis.

10.3 Partial force majeure

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

Article 11 - Confidentiality

11.1 Each of the Parties will keep secret the information that it receives (in whatever form) from the other Party and all other information concerning the other Party which it knows or may reasonably suspect to be secret or confidential, or information the dissemination of which it may expect to cause damage to the other Party, and will take the necessary measures to ensure that its personnel keeps the said information secret.

Confidential information is understood to include in any event:

- The psychometric methodology, algorithms, item banks and norm data of the ODC or MC;
- Test results and Personal Data of Data Subjects;
- Team Dynamics displays and aggregated team profiles, in so far as these are traceable to individual Data Subjects.
- Business processes, know-how and commercial information of both Parties;
- Financial information, contract terms and price arrangements;
- All information marked as 'confidential'.

11.2 The Client acknowledges that the Cloud Service and the Application always have a confidential nature and that these contain trade secrets of Odin, its supplier or the producer of the software.

11.3 By way of derogation from the first paragraph of this Article, Odin may, if it acts on its own behalf in civil or criminal proceedings, use the information provided by the Client, as well as other information of which it has become aware in performing the Agreement, if in its opinion this may be relevant to its defence.

11.4 The confidentiality obligation referred to in this Article does not apply to information that:

- Must be disclosed by the receiving Party on the basis of a statutory obligation;
- Was already publicly available without breach of the confidentiality obligation;
- Has been lawfully obtained from a third party without a confidentiality obligation;
- Has been independently developed without the use of confidential information.

If a Party is obliged to disclose confidential information:

- It will notify the other Party thereof in advance (where legally permitted);
- Limit the disclosure to what is strictly necessary;
- Make reasonable efforts to safeguard confidentiality.

11.5 The confidentiality obligation described in this Article continues to apply in full after the end of the Agreement for a period of 5 years, or longer if it concerns trade secrets or Personal Data that must remain confidential for longer.

11.6 Non-disclosure agreements

If the nature of the collaboration gives cause to do so, the Parties may conclude a separate non-disclosure agreement (NDA) with more specific provisions. In the event of conflict, the NDA prevails over this Article.

Article 12 - Duration, termination and the consequences thereof

- 12.1 The Agreement is entered into for a term of 36 months, unless the Parties agree otherwise. The Agreement is each time tacitly renewed for a term of one year, unless the Client or Odin terminates this Agreement in writing by registered letter or email with read receipt, subject to a notice period of three months before the end of the relevant period.
- 12.2 Each Party has the power to rescind the Agreement on account of an attributable failure in the performance of the Agreement if the other Party attributable fails in the performance of material obligations under the Agreement. Rescission is only possible after a full and detailed written notice of default in which a reasonable period of at least fourteen (14) days is set for remedying the failure.
- 12.2.1 Any payment obligation of the Client and all other obligations of cooperation by the Client or a third party engaged by the Client always count as material obligations under this Agreement.
- 12.2.2 Material failures (without prior notice of default):
The Agreement may be rescinded with immediate effect 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 with demonstrable damage;
 - Bankruptcy, suspension of payments or liquidation;
 - Fraud, intent or gross fault.
- 12.3 Performances already rendered in performance of the Agreement at the time of the rescission as referred to above will not be subject to reversal, unless the Client proves that Odin is in default in respect of a material part of those performances. In that case, the value of the performances already rendered by Odin for the Client is (subject to evidence to the contrary) determined as equal to that of the fees already paid. Amounts invoiced by Odin before the rescission in connection with what Odin has already duly performed or delivered in performance of the Agreement remain owed in full, subject to the provisions of the previous sentence, and become immediately due and payable at the time of the rescission.
- 12.4 The Client is entitled to terminate the Agreement prematurely if an amendment of the 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 in writing without notice of default and with immediate effect if the other Party is granted — whether or not provisionally — a suspension of payments, if bankruptcy is applied for in respect of the other Party, or if the business of the other Party is liquidated or wound up other than for the purpose of a restructuring of businesses. In connection with such termination, Odin is not obliged to refund monies already received or to pay compensation. In the event of bankruptcy of the Client, the right to use the Cloud Service and the Application lapses.

Article 13 - Disputes and applicable law

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

13.2 Mediation:

- Before commencing proceedings before the court, 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 are borne equally, unless the Parties agree otherwise.

13.3 Exceptions to the choice of forum:

By way of derogation from Article 13.1, Odin is entitled:

- To bring proceedings before the competent court of the Client's place of establishment;
- To commence summary proceedings before any competent court;
- To take collection measures via competent bodies of its choice.

13.4 Applicability of the GDPR:

In so far as the General Data Protection Regulation (GDPR) applies:

- The GDPR prevails over these General Terms and Conditions in the event of conflict;
- Data Subjects have the right to lodge a complaint with the Dutch Data Protection Authority;
- Data Subjects may claim compensation in accordance with Article 82 GDPR.

13.5 EU processing. Odin processes all Personal Data of Data Subjects solely on servers located within the European Economic Area (EEA). This obligation is further elaborated in the GDPR Annex (Annex B). The Client, as an independent controller, is responsible for compliance with the export restriction as referred to in the GDPR Annex.

Article 14 - Miscellaneous provisions

14.1 If any provision of this Agreement proves to be void, this does not affect the validity of the Agreement as a whole. In that case, the Parties will establish (a) new provision(s) in replacement, by which they follow the intent of the original Agreement as far as legally possible.

14.2 If, on the basis of a request or a duly given order of a government body or in connection with a statutory obligation, Odin must carry out activities relating to data of the Client, its employees or Data Subjects, all costs associated therewith will be charged to the Client, unless the cause of this investigation lies with Odin. Odin will, as far as possible, notify the Client thereof in advance.

14.3 The version of any communication received or stored by Odin counts as authentic (including log files), subject to evidence to the contrary to be provided by the Client.

14.4 The Parties will always inform each other in writing, within a reasonable period, of any changes to name, postal address, email address, telephone number and, where requested, bank or giro number. Odin is not liable for the consequences of communication to outdated contact details if the Client has not notified the change.

14.5 Communication and notices:

All notices, terminations and communications must be made in writing:

- By registered post to the last known address; OR
- By email to the officially provided email address with read receipt; OR
- Via the secure message centre in the Portal (for operational communication).

Notices are deemed to have been received:

- In the case of registered post: 3 working days after dispatch;
- In the case of email: 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);
- GDPR Annex;
- Prices and fees;
- Any additional annexes;

constitute the entire agreement between the Parties. Earlier arrangements, undertakings or correspondence are superseded by these documents, unless expressly agreed otherwise in writing.

14.7 Order of precedence in the event of conflict:

In the event of conflict between documents, the following order of precedence applies:

1. The User Agreement (main contract);
2. Annex A — Prices and Rates;
3. Annex B — GDPR Annex (for all GDPR aspects);
4. Annex C — General Terms and Conditions;
5. Annex E — Infrastructure Declaration EU processing (technical, confidential; available on request in accordance with the Agreement);
6. Annex D — Privacy Statement (informative; not normative in contractual disputes).

14.8 Future laws and regulations:

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

- The Parties will enter into consultation on adjustment of the Agreement;
- Odin may implement reasonable cost adjustments after consultation with the Client;
- The Client has the right to terminate the Agreement if the adjustments are disproportionate.