

## **1. Terms of Business**

These terms of business are the standard terms of business for Data-Mill (DP) Ltd, trading as BCDP ("the Terms"). The Terms govern the basis upon which the Proposal and Quotation are submitted to the Client and govern the formation of the Contract and any implementation of the services referred to in the Proposal. These Terms are the only terms and conditions which govern the relationship between the Company and the Client. No other terms and conditions (whether contained in any purchase order issued by the Client or otherwise) shall apply.

In these Terms, the following words shall have the following meanings:

"Client" means the company or organization to whom the Proposal or

Quotation is submitted; "Company" means Data-Mill (DP) Ltd, trading as

BCDP.

"Contract" means any contract entered into between the Client and the Company in accordance with clause 1 below;

"Primary Records" means all records materials and information obtained by verbal interviewing techniques, postal and other self-completion questionnaires, mechanical or electronic equipment, observation and any other method where the identity of the provider of the information may be recorded or otherwise traced and all similar records.

"Secondary Records" means all data, tables, records and information collating and including the results of the Primary Records from which the provider of the information is not traceable.

"Report" means any and all reports (written, tabular, graphical or electronic) to be prepared by the Company when implementing the Proposal to be issued to the Client, which contains the analysis and conclusions drawn from the Primary and Secondary Records.

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"Proposal" means the proposal relating to the work and services to be carried out by the Company on behalf of the Client as set out in writing and either attached to these Terms or as agreed between the parties. Where no formal proposal has been issued (e.g. verbal instruction), the work will be carried out in accordance with the Company's usual terms and working practices.

"Quotation" means the estimated indication of fees of the Company involved in implementation of the Proposal issued by the Company and either attached to the Proposal or as otherwise issued in accordance with these Terms whether before or after the formation of the Contract or as otherwise agreed between the parties.

- 1 The Proposal and Quotation are submitted to the Client for approval by the Client. In the event that the Proposal and Quotation are acceptable to the Client, the Client shall be entitled to notify the Company in writing or verbally, whereupon the Company may choose to accept the offer of the Client and confirm that a contract is in existence between them in relation to implementation of the Proposal.
- 2 The Company shall confirm the creation of the Contract either in writing or by issuing the first invoice in respect of fees due.
- 3 The Client agrees and confirms that the Proposal and Quotation are being provided by the Company on a confidential basis. The Client shall not make any use of the Proposal or Quotation other than for the purposes of considering whether or not it wishes the Company to implement the Proposal and the Client shall not disclose its contents to any other party. If requested at any time, the Proposal and Quotation shall be returned to the Company immediately upon request. No copies of the Proposal or Quotation may be made without the prior written consent of the Company. The provisions of this clause shall be binding upon the parties whether or not the parties enter into the Contract.
- 4 The Client confirms that the Company has put together the Proposal and Quotation on the basis that no more than 3 other research agencies have been asked to put together proposals, recommendations, quotations or

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specifications for the same or similar project as referred to in the Proposal. If this is not the case, the Client shall inform the Company immediately and the Company shall be entitled to make a charge for the work involved in putting together the Proposal and Quotation, calculated on a time cost basis.

- 5 The Client shall make available information as requested by the Company to ensure compliance the Code of Conduct of the Market Research Society (MRS) and the Client warrants and agrees to be responsible for the accuracy of any information and for any instructions supplied by or on behalf of the Client.
- 6 The Company undertakes not to disclose to any third party the Client's identity, the results set out in the Report or any information obtained in confidence regarding the business of the Client, without first obtaining the Client's approval. Similarly, the Company will ensure that respondents in any research shall remain anonymous, and all reasonable precautions will be taken so that respondents will not be adversely affected or embarrassed as a direct result of the participation in the research project.
- 7 Confidential research specifications provided by the Client shall remain confidential to that Client and may not be revealed in whole or in part to any third party without the express consent of the Client.
- 8 The Primary Records and all project materials shall at all times remain the property of the Company, who shall be entitled to destroy them, without reference to the Client, 12 months after the submission of the Report or on completion of the services set out in the Proposal. Title in the Secondary Records and the Report shall be passed to the Client on payment in full of all fees due. Where self-completion or postal questionnaires have been processed, the Company shall be entitled to destroy them, without reference to the Client, 12 months after the submission of the Report or on completion of the services set out in the Proposal.
- 9 Unless stated otherwise in the Proposal, the Quotation covers the provision of one electronic copy of the Report. The Company reserves the right to charge for additional copies and shall supply such copies provided that any



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request has been received within 12 months of delivery of the Report.

- 10 The Report and other Secondary Records provided by the Company are normally for use within the Client's organisation or by its consultants, and only on the Client's business. The Client undertakes to inform the Company of any intended wider publication of the Report or any results (whether wholly or in part) supplied by the Company prior to release and to identify the Company as the supplier of the work to be published. The Company's name may not be quoted in connection with the study until the exact form of such communication has been agreed with the Company.
- 11 In the event that the Proposal covers a project to be carried specifically on behalf of the Client alone, the copyright in the Report shall belong to the Client upon full payment of the Company's fees. In all other circumstances, whether the Proposal covers syndicated or multi-client research studies or otherwise, the copyright in the Report shall remain the property of the Company and the Client shall be given a non-exclusive licence by the Company to use the Report and any other records provided by the Company for use within the Client's organisation or by its consultants for the purposes of the Client's business and for any other purposes contemplated in the Proposal. In all circumstances, the Company shall be entitled to use the Report and any results and other records for its own internal purposes. For the avoidance of doubt, the Company shall unless otherwise agreed in writing on each and every occasion retain copyright in the Primary Records, in the research methodology and in the design, layout and content of any questionnaire used by the Company.
- 12 Subject to these Terms, the Quotation shall be valid for 8 weeks from the date of issue of the Proposal and Quotation. Unless otherwise stated, the Quotation is calculated on the assumption that data collection shall commence within one month from the formation of the Contract. In the event that either period shall be exceeded, for any reason whatsoever, the Company reserves the right to adjust the Quotation accordingly.
- 13 The last Quotation issued by the Company in respect of the relevant Proposal is the one that will fix the level of fees payable to the Company.



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The fees will be invoiced in 3 instalments as follows: 50% on creation of the Contract, 25% on the commencement of collection of data by the Company, and 25% on submission of the Report or completion of the services referred to in the Proposal, unless otherwise stated in the Proposal. All payments shall be due within 21 days of the date of invoice.

- 14 The Company reserves the right to charge interest at a monthly rate of 2% on overdue payments, calculated on a daily basis, and to suspend implementation of the Proposal until payment is made.
- 15 The Quotation is exclusive of VAT or any appropriate local sales taxes, which shall be chargeable at the then current rate to the Client in the relevant currency. The Quotation and fees are exclusive of any other applicable taxes, including withholding taxes. In the event of any such taxes being payable, the Quotation and fees shall be adjusted upwards accordingly in order to reflect the amount which would have been payable to the Company had any sums not been payable or withheld in respect of such taxes.
- 16 If, at any time, the Client requests that any aspect of the project set out in the Proposal (including timing) be changed, the Company reserves the right to adjust the Quotation.

- 17 If the Company has based the Quotation upon information provided by or on behalf of the Client, which is subsequently shown to be incorrect or incomplete or if the Client's original brief is inappropriate, the Company reserves the right to adjust the Quotation accordingly at any time to charge any resulting additional costs to the Client.
- 18 Unless expressly stated otherwise in the Proposal the Quotation is in UK sterling. For projects involving currencies other than sterling, the Quotation is subject to exchange rate movements prior to formation of the Contract *and up to one banking day thereafter* at which time the Company normally obtains forward cover. Should delay or other factors frustrate this procedure and involve the Company in additional cost not envisaged at the time of formation of the Contract, the Company reserves the right to pass on the extra cost to the Client.
- 19 The Company reserves the right either to adjust the Quotation at any time to charge for additional unforeseen costs incurred as a result of matters beyond its control (such as statutory amendments to rates of pay, taxes and duties, or other circumstances outside the control of the Company e.g. war, civil disturbance, strikes or capricious behaviour of the authorities) or to postpone or cancel any project affected by such circumstances without liability to the Client. The Company shall give the Client written notice of termination or postponement or details of the revised Quotation as applicable and the Client shall be liable for all losses/charges already committed or incurred and all fees for work carried out until postponement or cancellation. In the event of the Company issuing a revised Quotation, the Client would be entitled within 7 days of receipt of written notice from the Company to cancel such project subject to payment of all fees and costs up to cancellation.
- 20 The Company's requires independent review of the design aspect of the Company's Proposal/Quotation by the Client. Acceptance of the Proposal is



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deemed to be evidence of this review being satisfactorily completed.

- 21 The Client warrants that when the Client or anyone on its behalf supplies the Company with any information/material, the use of such items by the Company shall not be in contravention of the Data Protection Acts 1984 or 1998 or any statutory modification or re-enactment thereof or similar local law or in the relevant part of the territory covered by the Proposal, or any other relevant legislation laws, rules or regulations relating to privacy or data protection.
  
- 22 Where products, samples or other materials supplied by the Client are to be used in the research project, the Client warrants that any content, packaging or labelling shall comply with all relevant laws in all relevant territories and shall indemnify the Company from any loss, liability, cost, expense, claim or proceeding suffered by the Company arising from their use or from any allegation that they infringe any intellectual property or other rights of any third party or from any of them being defective. If required by the Company, the Client shall produce evidence of sufficient product liability, or other insurance.

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- 23 If the Client wishes the Company to represent it in respect of dealing with any complaint regarding any products, samples or other materials used in the research project, this shall only be with the prior agreement of the Company (which may be withdrawn at any time) and at the cost of the Client.
- 24 The results, prognoses and any conclusions and recommendations contained in the Report will be to the best of the Company's knowledge, accurate but will be subject to the usual statistical norms and variables and to subjective interpretation applied to research of this nature. The Client acknowledges these factors when seeking to rely on the Report. Further, as the results, prognoses, conclusions and recommendations are just one factor to be taken into account by the Client, the Client accepts, save as provided by clause 26 that the Company cannot be liable for any action based on the Report or its interpretation. In the case of predictive techniques, the Client accepts that any subsequent change in market conditions on which the assumptions are based, or to the test product or service itself, could impact the initial performance predictions including possible invalidation of the results.
- 25 The Client shall be responsible for promptly complying with all requests for information or approval in order to assist the Company in complying with any required timescales. However, although the Company will use its best efforts to comply with such timescales, these are given for guidance purposes only and the Company shall not be liable for any failure to meet any such timescales or any loss or damage arising as a result.
- 26 The Company shall not be responsible for any economic, indirect, or consequential loss or loss of profits arising out of any breach of its obligations, negligence or otherwise. In any event, whether as a result of its negligence or otherwise, the liability of the Company to the Client shall be limited to the level of fees set out in the Quotation. The Client acknowledges that the Quotation has been put together on the basis that if the Client



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requires additional protection or cover, the Client should take out its own insurance.

- 27 Any notice to be given by either party to the other shall be in writing and delivered to the other party at its last known address. Notice may be served by personal delivery or by facsimile (whereupon it will be deemed served immediately) or may be sent by pre-paid post, whereupon it will be deemed served 48 hours after posting or may be sent by e-mail, whereupon it will be deemed served upon confirmation of receipt being received.
- 28 These Terms and the Contract will be subject to English law and the non-exclusive jurisdiction of the English courts.