

[INSERT DATE]

**Confidential**

(Title) John Sample  
Title  
Example Company  
Somestreet 33  
1122 ANYTOWN

**Project [INSERT PROJECT NAME]**

Dear [INSERT NAME OF RECIPIENT AUTHORISED TO ENGAGE THE COMPANY]:

Further to our recent conversations, we, The Boston Consulting Group, **Inc.** (“we” or “BCG Host”), together with The Boston Consulting Group UK LLP (“BCG UK”) look forward to working with you and your team on this [COMPLETE] effort at [INSERT CLIENT NAME] (“Company”).

In this Proposal Letter, we outline the Services, Deliverables and Products that we will be providing to you, as well as the terms and conditions that govern the engagement. Capitalized terms used in this Proposal Letter are defined in the attached BCG Terms.

**1 Description of the Project**

Proposal text ...

**2 Scope of Services**

Proposal text ...

Any change in the scope of Services described in this Proposal Letter, including change in any Deliverables or Products, will be mutually agreed upon in writing by authorized individuals of both parties.

**3 Deliverables and delivery**

**3.1.** BCG shall provide the following Services ...

- Proposal text ...
- ...

**3.2.** The following Deliverables will be provided by BCG as part of the Services:

- Proposal text ...

- ...

[**DELETE IF NOT APPLICABLE**] BCG shall deliver the [Deliverable or Foreground IPR] electronically, together with the [**OBJECT CODE or SOURCE CODE**] of the Deliverables on tangible media, or by other means, in BCG's sole discretion, to Company. Risk of loss of any tangible media on which the Deliverables is delivered will pass to Company on delivery to carrier.

The Parties acknowledge and agree that during the course of the Engagement, BCG may (be required) to use and/or incorporate in the Deliverables (i) BCG Background IPR and/or (ii) Third-Party Material, including open source and freeware.

3.3. [**DELETE IF NOT APPLICABLE**] The Deliverables will contain the following Background IPR

- Proposal text ...
- ...

[**PLEASE:**

(1) LIST BCG BACKGROUND IPR, KNOW HOW, TRADE OR TECHNICAL SECRET, BY LISTING SUCH IPR, KNOW HOW, TRADE OR TECHNICAL SECRET IN THIS SECTION OR A SCHEDULE TO THE LETTER OF ENGAGEMENT, AND  
(2) CONTACT LEGAL IF WE PLAN TO DEVELOP "NEW" (FROM SCRATCH/NOT BASED ON BCG BACKGROUND IPR) FOREGROUND IPR THAT WE NEED TO RETAIN BECAUSE IT IS CORE TO BCG AND/OR WE INTEND TO REUSE IN OTHER PROJECTS. LEGAL WILL DRAFT APPROPRIATE LANGUAGE.]

- [**DELETE IF NOT APPLICABLE**] The Deliverables will contain the following Third Party Material: [**INSERT LIST THE OSS/THIRD PARTY TOOLS**]
- ...

BCG will inform the Company prior to use of any other Third-Party Material.

#### 4 Term and Timeline

The project starts on [**INSERT DATE**] and shall expire on [**INSERT DATE**].

The project will be conducted over [**INSERT NUMBER**] weeks. [**INSERT NUMBER**] phases will be completed.

#### 5 Location

Unless otherwise agreed to by BCG and Company, the Services shall be performed at [**INSERT LOCATION**].

#### 6 BCG Leadership and Expertise

A joint BCG / [client] Steering Committee will guide the program, setting expectations for team output and reviewing / approving recommendations.

The project and strategic direction will be led by the following Managing Directors and Partners:  
[insert SMDP / MDP names].

BCG will bring a broad and deep bench of experts in [industry, function / topic, digital, geo], surging the right experts at the right time. A joint working team, including project management, will drive the day to day of the project, generating hypotheses, performing analyses, capturing insights, developing recommendations and enacting change. <sup>[1]</sup>

The project's ROI will be amplified by BCG's Knowledge Team experts, researchers, analysts, data scientists, designers and support functions and through leveraging BCG's vast intellectual property including [PA databases, benchmarks, core products, Gamma tools].

## 7 Company Responsibilities

Company will:

[ ]

## 8 Agile methodology

### **[DELETE IF AGILE METHODOLOGY IS NOT USED]**

[BCG shall utilize an agile process involving multiple development iterations coupled with Company review and input of each incremental stage. Company, on behalf of itself, its Affiliates and its third party vendors, agrees to actively cooperate in the delivery of the Services and Deliverables, which includes, but may not be limited to: (a) fulfilling Company's obligations as set out in the Engagements; (b) gathering and providing data about Company's needs, business, operations, personnel, customers, and technology; (c) timely iteration, feedback and approvals of Deliverables, timelines, requirements and outputs; and (d) such other assistance as reasonably necessary for BCG to successfully deliver the Services and Deliverables.

As part of the project, there may be compliance, legal, tax and accounting issues to be resolved. BCG does not provide fairness opinions, valuations of market transactions, or legal, accounting, investment or tax advice. As part of the Company's resources, Company will, if relevant or needed, retain legal advice to provide the required input.]

## 9 Dependencies

### **[SECTION TO BE TAILORED TO THE PROJECT]**

BCG's obligations are contingent on the following dependencies:

- Company will deliver all required documentation, materials, and other resources as agreed by the parties and on a timely basis.
- Company will provide BCG with access to its premises and computer systems on which the Product is intended to be installed and operate (the "**Operating Environment**") as is necessary for BCG to provide the Services and Deliverables on a timely basis. Company will

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<sup>[1]</sup> Drafting Note: Do not detail on the ground resourcing (e.g., do not say one project manager, two consultants, etc.).

ensure the Operating Environment is set up and in working order to allow BCG to provide the Services and Deliverables on a timely basis.

- Company team members identified above will participate in regular meetings on mutually agreeable dates and times and cooperate with BCG to the extent reasonably required by BCG to carry out the Services.
- Company will manage any third party vendors it retains in connection with this Engagement and BCG will not be responsible for any delays due to dependencies on such third party vendors.
- BCG team will need access to, and cooperation from, Company experts, which Company agrees to procure to provide the Services in accordance with the requirements of this Engagement.

#### 10 Acceptance **[SELECT ONE OPTION]**

**[OPTION 1]** Services and Deliverables are considered completed when delivered by BCG unless agreed differently.

**[OPTION 2]** Company will have [fifteen (15) days] **[DETERMINE WHETHER A DIFFERENT REVIEW PERIOD (I.E., SHORTER OR LONGER THAN 15 DAYS) IS NEEDED.]** following receipt of each Deliverable listed in this Engagement (the “**Review Period**”) to verify whether such Deliverable materially meets the Specifications applicable to such Deliverable (each, a “**Non-Conformity**”). No later than the end of the Review Period, Company will provide BCG with written notice (email acceptable) describing in reasonable detail any such Non-Conformity. BCG will, in its discretion, take one of the following actions upon receipt of any such notice of Non-Conformity: (a) make commercially reasonable efforts to correct such Non-Conformity at no additional cost to Company, and re-deliver the corrected Deliverable to Company (in which event the Review Period will commence again for such Deliverable), or (b) if BCG reasonably concludes that it cannot remediate the Non-Conformity, refund to Company the portion of the fees associated with such Deliverable. The foregoing remedies shall constitute the Company's sole and exclusive remedy in respect of any Non-Conformity. Deliverables will be deemed accepted at such time as Company notifies BCG of its acceptance, provided if Company does not provide BCG with such notice of acceptance or rejection of a Deliverable by the end of the Review Period, then such Deliverable will be deemed accepted by Company.

#### 11 BCG Products **[DELETE IF NO BCG PRODUCTS WILL BE USED]**

For the purposes of facilitating execution of this program, the following BCG Product will be used:

- **[INSERT ALL BCG PRODUCT(S) THAT WILL BE USED DIRECTLY BY THE CLIENT, E.G. ORGBUILDER]**

The description of the maintenance and support policies as well as performance service levels specific to the BCG Product identified above are attached to this Proposal Letter in **Annex 1**.

## 12 Fees

The Company will pay the Fees to BCG Host for the performance of the Services, the provision of any Deliverables and use of the BCG Products, as set out in Clause 6. For the purposes of this Proposal Letter and the BCG Terms, “Fees” means all professional fees and expenses, excluding taxes, with certain limited exceptions, including, but not limited to, the costs of primary consumer research, expert interviews, and translation services that will be passed through at cost as they are incurred. Other limited exceptions include international travel, for which an additional [\$x] will be invoiced during the engagement.

BCG and Company have agreed that the Fees are [COMPLETE] and expenses are [Complete] Also state how expenses are treated (included, fixed % of fees, fixed value, as incurred).

BCG Host will invoice the Company for the Fees in [CURRENCY] as outlined [below/ in attached invoice schedule]. In accordance with the BCG Terms, Company will pay the invoices within thirty (30) days’ from the invoice date.

### Some considerations for invoicing to optimize BCG’s DSO:

Consider first instalment at Proposal Letter acceptance:

- Fees will be invoiced in X equal instalments of [COMPLETE] with the initial instalment invoiced at acceptance of this Proposal and subsequent instalments invoiced monthly thereafter.

Consider first instalment at commencement of work:

- BCG will invoice you for the Fees in X equal instalments of [COMPLETE]. BCG will issue the first invoice when we start work and then monthly thereafter.

[Note: this implies the Proposal Letter has not been signed but work has begun. In some situations, clients will be willing/able to process payment without a contract. In many situations, client will not be able to process without a signed Proposal letter/contract. If we are able to invoice/client able to process then it improves our position legally and on DSO.]

For cases of shorter duration (12 weeks or less), consider invoicing ½ at start/acceptance and dividing remaining 50% billing to mid project and final deliverable:

- 50% (or insert \$) when we start work, 25% (\$) at month 2 and 25% (\$) at month 3/final deliverable (for projects of short duration 12 weeks or less).

Consider variable instalment arrangements:

[How many installments will there be?]

or [Variable Installment Percentage 1] (insert lines where multiple installment %)

or [Variable Installment Amount 1] (insert lines where multiple installment amounts )

or [Variable Installment Date 1] (insert lines where multiple installment dates)

### 13 Terms

The provision of the services set out in this proposal letter will be governed by the attached BCG Terms. In the event of a conflict between this Proposal Letter and the BCG Terms, the provisions of the BCG Terms will prevail, unless otherwise expressly varied in this Letter.

**[INSERT ANY ADDITIONAL PROVISIONS APPLICABLE TO THE SPECIFIC SERVICES]**

Yours sincerely,

Name:

Title:

On behalf of The Boston Consulting Group, Inc. and  
signing for The Boston Consulting Group UK, LLP

AA/BB/cc

Enclosure

If you agree with the proposal as set out above, including the BCG Terms, please sign one copy and return it to us.

\_\_\_\_\_  
Client name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## Invoice Schedule

### 1. Invoice contact

Name:  
Address Line 1:  
Address Line 2:  
Address Line 3:  
Address Line 4:

### 2. Fees

In accordance with Clause 12 (Fees) of the Proposal Letter, BCG Host will invoice Company for the Fees (and any additional expenses) as set out in the table below.

*[indicate type of fee arrangement e.g. variable, All-in, fixed fee, % expenses etc]*

Invoice Type	Amount	Date
Fixed Fee / Retainer	\$xxxx	xx.xx.20xx
Fixed Fee / Retainer	\$xxxx	xx.xx.20xx
Fixed Fee / Retainer	\$xxxx	xx.xx.20xx
Fixed Fee / Retainer	\$xxxx	xx.xx.20xx
Variable (not required if fixed fee and can remove)		
Milestone		
Milestone		
Performance		

<b>BCG Terms</b>
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These terms ("Terms") apply to the provision of Services and Deliverables to Company as set out in the Proposal Letter. Services are provided by The Boston Consulting Group, Inc. a Massachusetts corporation ("BCG Inc."), together with The Boston Consulting Group UK LLP ("BCG UK"). BCG Inc. and BCG UK are both principals on the Engagement and referred to collectively as "BCG." Capitalized terms have the meanings set out in the body of these Terms or as set out in Schedule 1.

## 1. SERVICES

- 1.1 **Contract Formation.** By signing the Proposal Letter, Company agrees to engage and pay BCG to provide, and BCG agrees to provide, Services and Deliverables ("Engagement") in accordance with the Proposal Letter and these Terms (together, "Agreement").
- 1.2 **Provision of Services.** BCG will perform the Services with the degree of care, skill and foresight one would reasonably and ordinarily expect from a provider engaged in the same type of undertaking under similar circumstances. Any claim by Company against BCG under this paragraph must be made within sixty (60) days from the end of the Term of the Engagement.
- 1.3 **Company Responsibilities.** Company agrees to actively cooperate in the delivery of the Services and Deliverables and is responsible for: (a) providing data about Company's needs, business, operations, personnel, customers, technology, requirements (including relevant legal and compliance requirements); (b) fulfilling Company dependencies set out in the Proposal Letter; (c) providing and maintaining materials and services such as computers, software, hardware, office space, furniture, facilities, utility and internet services, as required; (d) timely iteration, feedback and approvals of goals, timelines, requirements and outputs; (e) ensuring the use of Services and Deliverables comply with the laws and regulations applicable to Company; and (f) such other assistance as necessary for BCG to successfully deliver the Services and Deliverables.
- 1.4 **BCG Relief.** BCG is not responsible for delay, failure to perform or deliver, or alteration of Services and Deliverables, or loss or corruption of Company Data due to: (a) any failure by Company to comply with its responsibilities under Section 1.3; (b) any breach by Company of

the Agreement; or (c) the occurrence or continuation of any Force Majeure Event.

- 1.5 **Use of Subcontractors and Third Parties.** Company consents to BCG's use of subcontractors and third party consultants and experts. Subject to this Agreement and except as otherwise agreed, BCG is responsible for the acts and omissions of the subcontractors and third parties it retains.

## 2. TERM AND TERMINATION

- 2.1 **Term.** The term of the Engagement is as set out in the Proposal Letter, unless terminated earlier pursuant to Section 2.2 (Termination) (the "Term").
- 2.2 **Termination.** The Engagement may be terminated by either BCG or Company immediately upon written notice ("Notice") if the other Party: (a) commits a material breach of the Agreement which is incapable of remedy or, where such breach is capable of remedy, the breaching Party fails to remedy that breach within 30 calendar days after receipt of Notice; (b) suffers an Insolvency Event; or (c) suspends, ceases, or threatens to cease operating all or a substantial part of its business, or disposes of all or a substantial part of its assets.
- 2.3 **Effect of Termination.** Termination or expiry of the Engagement will not release a Party from any liability that has accrued but remains unpaid or outstanding as of the date of termination or expiry. Upon the expiration or termination of the Engagement, licenses and rights to use granted hereunder will automatically and immediately terminate unless renewed or extended by express written agreement of BCG.

## 3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 **Background IPR.** Each Party owns and retains all rights, title, and interests in and to, its Background IPR. Company grants to BCG a worldwide, non-exclusive, royalty-free, sub licensable and non-transferable license to use Company's Background IPR to the extent necessary to enable BCG to perform the Engagement.
- 3.2 **Deliverables**
  - 3.2.1 **Non-Software Deliverables.** Subject to section 3.2.4, BCG assigns the Foreground IPR contained in the Non-Software Deliverables to Company



effective upon receipt of Company's payment for the applicable Non-Software Deliverable.

- 3.2.2 **Software Deliverables.** Subject to section 3.2.4, BCG grants to Company a non-exclusive, non-transferable (other than to Company's Affiliates), royalty-free, worldwide, perpetual license to use, copy, translate, display, and prepare derivative works of the Software Deliverables for Company's internal business purposes, including the right to amend, adapt, transform, translate in whole or in part and into any format whatsoever the Software Deliverables to carry out remedial maintenance and integrate interfaces, provided such use does not breach Company's confidentiality obligations to BCG, BCG's confidentiality obligations to third parties, or infringe BCG's Background IPR.
- 3.2.3 Company acknowledges and agrees that BCG prepares the Deliverables solely for Company's internal use. Company will not disclose Deliverables or make Deliverables available for use by any third party without the prior written consent of BCG. Company will procure that any third party to which it wishes to disclose Deliverables or any other BCG materials or work must first sign BCG's standard form of non-reliance letter and/or non-disclosure agreement. BCG can provide Company with a copy of these forms upon Company's request. If BCG agrees to Company disclosing the Deliverables or extending access to Deliverables to third parties, Company agrees that BCG will not be responsible for any Losses incurred by Company or any third party as a result of or in connection with such disclosure or authorized use of, or reliance on, the Deliverables or any other aspect of BCG's work.
- 3.2.4 BCG is not precluded from developing for itself, or for others, anything, whether in tangible or non-tangible form, that is competitive with, or similar to, any of the Deliverables, provided that BCG does not use any Company Confidential Information for which it does not have a license to use for such purposes. Additionally, BCG is free to use its general knowledge, skills, experience, know-how, expertise, ideas, techniques, approaches, concepts, and designs used, developed, or acquired by or on behalf of, BCG in the course of the Engagement, including but not limited to, any know-how, concepts, or information retained in the unaided memory of BCG employees or agents, as a result of authorized access to Company Confidential Information.

### **3.3 Company Data.**

- 3.3.1 Company owns Company Data. Except for the rights expressly granted in the Agreement, all rights, title and interest in and to any and all proprietary rights in Company Data will remain with and be the exclusive property of Company.
- 3.3.2 Company grants to BCG a worldwide, non-exclusive, royalty free, irrevocable license, including the right to grant sublicenses to BCG's Affiliates, subcontractors and third party consultants or experts performing services for BCG under the Engagement, to access, use, copy, display, perform, store, host, retrieve, anonymize, process, aggregate, mine, analyze, and modify Company Data, and to compile, combine or incorporate such Company Data with or into other data and information, for the purpose of the Engagement and as required to provide the Services and Deliverables. Company will obtain all rights and permissions relevant and necessary for such purposes, and to the extent required, notify any individuals or entities who own or have an interest in Company Data, to ensure that BCG can access and use Company Data for the purposes of the Engagement. Company agrees that BCG may use and upload Company Data to secure cloud-based file storage and sharing solutions when providing Services to Company.
- 3.4 **Aggregated Data.** In the course of the Engagement BCG may use Aggregated Data for analytical, statistical, reporting and training purposes and BCG will own such Aggregated Data. Company agrees to allow BCG to remotely collect, store, maintain, process, and use diagnostic, technical, usage and other related information with the aim of improving the applicable BCG Product for any reason, including, but not limited to, product enhancements or security evaluations. Nothing contained in this Section limits or reduces BCG's obligations to protect Company's Confidential Information or Personal Data.

### **3.5 Third Party Materials**

- 3.5.1 BCG agrees, to the extent permitted by the applicable third party, to assign or transfer the license related to Third-Party Material incorporated into Deliverables. In the event that BCG is not able to assign or transfer the license, Company agrees it will secure a separate license directly from a licensor. Company acknowledges that the proper functioning of Deliverables and availability of some or all features of a

Deliverable may be contingent on Company holding licenses to Third-Party Material.

- 3.5.2 Company will at all times: (a) comply with the terms, conditions, and restrictions set forth in any agreements regarding use of Third-Party Material and acknowledges that BCG is also subject to such terms, conditions and restrictions; (b) be solely responsible for the payment of all fees, costs or expenses associated with Third-Party Material, except as set out in the Proposal Letter; and (c) ensure its use of BCG Background IPR, BCG Products, and Software Deliverables does not pose a security risk or adversely impact the ability of other parties to access the services, systems or materials.
- 3.5.3 BCG makes no representations or warranties of any kind with respect to Third-Party Material. Warranties, obligations, liabilities, and Company's remedies with respect to Third-Party Material, are limited in each case to whatever recourse may be available in the applicable third party agreement and BCG has no liability with respect to such Third-Party Material.

#### 4. BCG PRODUCTS.

- 4.1 **License, Right to Use.** BCG or BCG's licensors own and retain all rights, title and interests in, and relating to, BCG Products. Subject to Company's compliance with the terms of this Agreement, BCG grants to Company and its Permitted Users a limited, worldwide, non-exclusive, non-transferable, non-sub-licensable, revocable right to access and use the BCG Products as specified in the Proposal Letter and to access, use, and make a reasonable number of copies of relevant Specifications, in each case solely for Company's internal business purposes for the term of the Engagement, unless a different period is specified in the Proposal Letter.
- 4.2 **Support.** BCG agrees that it will: (a) give Company a brief technical introduction to the relevant BCG Product(s); (b) provide maintenance and support for SaaS and cloud-based BCG Products as described in the applicable standard service level agreement ("SLA"); and (c) to the extent the BCG Products are used to process Company Data, take commercially reasonable measures to protect such Company Data, which measures will be no less than the measures BCG takes to protect its own data. Company acknowledges and agrees that BCG cannot and does not guarantee the privacy, security, integrity, or authenticity of any

information, including but not limited to Company Data transmitted over, or stored in, any system connected to the Internet.

- 4.3 **Company Obligations.** Company agrees that it will: (a) limit access to BCG Products and Specifications to Permitted Users; (b) be solely responsible for any breach of the Agreement by Permitted Users; (c) not decompile, disassemble, reverse engineer or otherwise attempt to obtain or modify the source code of BCG Products or reduce to human perceivable form all, or any part, of the BCG Products for any reason; and (d) be solely responsible, and BCG will bear no responsibility for (i) correctly inputting Company Data to BCG Products; (ii) decisions regarding data input (e.g., field definitions) in respect of the processing of Company Data by BCG Products; (iii) the selection, quality, integrity, authenticity, exhaustiveness of, or errors or omissions in, Company Data; (iv) Company's choices with regard to configuring BCG Product options (e.g., filters and groupings); and (v) Company's interpretation of, and decisions taken, based on reports or other output generated by BCG Products. Company warrants that all Company Data inputted to BCG Products will be free of any bugs, viruses, and other malware.

#### 5. FEES AND PAYMENT

- 5.1 **Fees.** Company will pay BCG Inc. amounts due for the Services and Deliverables, as set out in the Proposal Letter ("Fees"). To the extent the Engagement terminates before completion for any reason, Company will pay Fees incurred for all Services and Deliverables up to the date of termination, together with expenses incurred by BCG, through such date.
- 5.2 **Payment.** Unless expressly agreed otherwise in the Proposal Letter, BCG Inc. will invoice Company monthly (or every four weeks). Company will pay the invoices within thirty (30) days from the invoice date. Overdue balances will accrue interest at a rate of 1.5% per month or such lesser amount required by applicable law.
- 5.3 **Taxes.** The Fees do not include applicable taxes. BCG will charge, and Company will pay, all applicable taxes in connection with the Engagement including but not limited to, sales, use, excise, value-added, business, goods and services, consumption, withholding, and other similar taxes and duties, as well as penalties and interest, if any.

## 6. CONFIDENTIALITY

**6.1 Confidentiality.** Except as set out in Sections 6.3 and 6.4, each Party will keep confidential the Confidential Information of the other Party.

**6.2 Exclusions.** Confidential Information will not include information that: (a) is previously known to, or in the possession of, the receiving Party without an obligation not to disclose; (b) is acquired by a receiving Party from a third party which was not, to the receiving Party's knowledge, under an obligation not to disclose such information; (c) which the receiving Party can demonstrate was independently developed by or for the receiving Party without reliance on any Confidential Information of the other Party; (d) becomes publicly known and made generally available, through no breach of the Agreement; or (e) consists of Aggregate Data, that neither identifies nor allows a third party to infer the identity of disclosing Party as the source or subject of any component of the Aggregate Data.

**6.3 Permitted Use.** Each Party may copy and use Confidential Information of the other Party only to the extent reasonably necessary for purposes of the Engagement. Each Party will protect the Confidential Information of the other Party in the same manner it protects the confidentiality of its own Confidential Information, but in no event using less than a reasonable standard of care. Each Party will restrict access to the Confidential Information of the other Party to those of its personnel (including personnel employed by its Affiliates) and subcontractors engaged in the performance, management, receipt, support, or use of the Services for the Engagement. Such access is permitted provided that such personnel and third parties are bound by obligations of confidentiality substantially similar to the confidentiality provisions under these Terms.

**6.4 Legal Proceedings.** If a Party receives an order of any court of competent jurisdiction or any regulatory, judicial, governmental, or similar body or any taxation authority of competent jurisdiction requiring disclosure of the Confidential Information of the other Party, to the extent legally permitted it will promptly notify the disclosing Party. If requested by the disclosing Party the receiving Party will reasonably cooperate with the disclosing Party (at the disclosing Party's request and expense) to oppose or limit the extent of such disclosure.

**6.5 Company Personal Data.** Company will use all reasonable efforts to ensure that it does not send any Personal Data to BCG. Notwithstanding the foregoing, if the Parties agree that BCG will process Company Personal Data on Company's behalf as part of the Services, the Parties will enter into a data processing agreement incorporating the terms required under article 28 of GDPR, or the applicable data protection legislation. Company will be the controller determining the purposes and manner in which Company Personal Data is processed and BCG will be the processor as such terms are defined in EU Data Protection Directive (Directive 95/46/EC) and the General Data Protection Regulation ((EU) 2016/679) ("GDPR").

## 7. WARRANTIES AND DISCLAIMER

**7.1 Representations and Warranties.** Each Party represents and warrants: (a) it has the right, power, and authority to execute and deliver the Proposal Letter and to perform and fulfil the obligations of the Engagement; and (b) the Agreement, when duly authorized, executed, and delivered by such Party, constitutes the legal, valid, and binding obligations of such Party, enforceable in accordance with the Terms. Company represents and warrants: (i) it has all necessary consents to allow BCG to use Company Data; and (ii) it will use the Services and Deliverables in a manner consistent with the Agreement.

### 7.2 Software Deliverables and BCG Products

**7.2.1** BCG warrants that, during the Warranty Period, Software Deliverables and BCG Products will function substantially in conformance with any agreed Specifications. If Company becomes aware of a Software Deliverable or a BCG Product that is not functioning in substantial conformance with the Specifications ("Defect"), Company will provide BCG with prompt written Notice of the Defect within the Warranty Period, including a reasonably detailed explanation of the Defect (such Notice to be provided in English). If BCG is able to reproduce the Defect in BCG's own operating environment and the Defect is not caused by (i) modifications made by or on behalf of Company or (ii) other reasons outside of BCG's control, BCG will correct the Defect, or at BCG's option after exercising commercially reasonable efforts to correct the Defect, refund to Company the portion of the Fees related to the defective part of the Software Deliverable or BCG Product (as long as the Company returns and no longer uses that portion

of the Software Deliverable or BCG Product) or Fees prepaid by Company for use of the Software Deliverable or BCG Products.

7.2.2 Company acknowledges that to assess and resolve the Defect, it may be necessary to provide BCG, the support staff, and all other persons duly authorized: (i) full, safe and uninterrupted direct access at Company sites or premises; and (ii) remote access to Company systems, files, equipment, and personnel as may reasonably be required for the purpose of performing the support described in this section 7.2.

7.2.3 The foregoing constitutes Company's sole and exclusive remedy, and BCG's sole and exclusive liability for any Software Deliverable or BCG Product Defect.

7.3 **Warranty Disclaimer.** To the fullest extent permitted by law and except as otherwise expressly set forth in the Agreement, BCG, on behalf of itself and its suppliers, makes no, and expressly disclaims all, express, implied and statutory representations or warranties, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, reliability, timeliness, quality, suitability, availability, accuracy or completeness, non-infringement, title and/or any warranties arising from course of dealing, usage, or trade practice. BCG does not warrant or represent that BCG Products or Deliverables will be uninterrupted or error-free. BCG does not guarantee specific results or output, resulting from, or generated through the Services, BCG Products or Deliverables, including any algorithmic, automated decision-making, artificial intelligence models, robot advisors, or chat bots. Company is responsible for Company decisions and actions based on outputs obtained from BCG Services and Deliverables. This section will survive the termination or expiry of the Engagement.

## 8. INDEMNITY

8.1 BCG indemnifies Company from Losses arising out of a claim brought by a third party that Company's use of the Services or Deliverables as contemplated by the Engagement infringes any third party IPR ("Infringement Claim") excluding patent rights. Company's sole remedy, other than this indemnity, is for BCG at BCG's option, to either: (i) procure Company's continued full use of the Deliverable as contemplated by the Engagement; (ii) substitute the infringing Deliverable; or (iii) modify the Deliverable to

become non-infringing. This remedy will not apply to any Infringement Claim arising in whole or in part from (i) a modification to a Deliverable not approved or performed by BCG, (ii) use of a Deliverable other than as contemplated by, or in a manner not compliant with this Agreement or the law, (iii) actions, claims, suits, or proceedings to the extent based upon the combination of the Deliverable with content, data, devices, products, software, service, or technology not supplied by BCG, even if the Deliverable have no substantial use other than as part of a combination. Company will use all reasonable endeavors to mitigate its Losses arising out of any third party IPR claim.

8.2 Company indemnifies, defends, and holds BCG, its Affiliates and their respective directors, officers, partners, members, representatives, agents, and successors and assigns (the "BCG Indemnified Parties") harmless from any actual or threatened claims and Losses, including as a party or witness in any claim, arising from or related to: (a) disclosure of the Deliverables by Company to a third party, or any use of, or reliance on, the Deliverables by such third party; (b) a third party claim that BCG's use of Company's IPR or Company Data in performance of the Services breaches any third party IPR or the confidentiality of a third party; (c) any damage caused to BCG Products by Company's use of BCG Products or by the inputting or processing of Company Data, including but not limited to, damage resulting from any bug, virus or other malware contained in Company Data; and (d) a third party claim against BCG with respect to any decisions made or actions taken by Company based on outputs obtained from BCG Services and Deliverables.

8.2.1 Company agrees to defend, indemnify, and hold harmless the BCG Indemnified Parties against all claims, costs, and damages, including reasonable attorneys' fees, arising from a third party claim or demand that is based upon, arises or results from, or relates to: (a) Company's or its agent's use, operation, utilization, or distribution of the Software Deliverables or BCG Background IPR in violation of the Agreement; (b) Company's failure to obtain the necessary rights, licenses, or consents to provide Company Background IPR or Company Personal Data; or (c) Company's non-compliance with section 3.5 with respect to Third-Party Material.

8.3 In the event either Party or its Affiliates are required to produce documents, testify or otherwise serve as a witness in the context of

legal disputes between the other Party and third parties or governmental investigations, the non-producing Party agrees it will reimburse all reasonable costs and fees that the other Party or its Affiliates incur to satisfy these obligations, including, but not limited to, reasonable fees for the retention of legal counsel to aid compliance with such obligations.

- 8.4** Each Party's indemnification obligations are contingent upon the indemnified Party providing the indemnifying Party prompt written Notice of any claim such Party seeks to have indemnified, provided that any failure to so notify will not limit any of the obligations of the indemnifying Party under this Section, except to the extent such failure materially prejudices the defense of such claims. A Party seeking indemnity will give the indemnifying Party sole authority to defend or settle the relevant claim and provide, at the indemnifying Party's expense, such information and cooperation as may be reasonably necessary to assist the defense of such claim. Each Party agrees on behalf of itself, and where applicable, on behalf of its Affiliates, that no settlement agreement will be entered into on terms that would impose liability on the other or increase its obligations hereunder, without the prior written consent of the other Party, which will not be unreasonably withheld. Each Party's respective indemnification obligations do not apply to the extent any claim, loss, expense or the like is caused by the Party seeking indemnification or its subsidiaries, affiliates, shareholders, directors, officers, employees or agents, or arises as a result of such Party's breach of the Agreement.

## **9. LIMITATION OF LIABILITY**

- 9.1** BCG Inc. and BCG UK are jointly and severally liable to Company with respect to any claim in connection with or related to this Agreement, and any such claims made against BCG UK and BCG Inc. will be pursued in the same jurisdiction.
- 9.2** Subject to Section 9.4, in no event will a Party be liable to the other Party for any: (i) indirect, special, exemplary, incidental or consequential damages; or (ii) direct or indirect damages arising from loss of business, data, profits, or goodwill, in each case, whether arising out of contract (including under an indemnity), tort (including negligence), statute, strict liability or otherwise, resulting from or related to the Engagement, whether or not such Party knew of should have known of the possibility of any such damages.
- 9.3** Subject to Sections 9.2 and 9.4, under no circumstances will BCG's aggregate liability to Company for any and all claims, including third party claims, or Losses arising from or in connection with or relating to the Engagement, whether in contract (including under an indemnity), tort (including negligence), strict liability, statute or otherwise, exceed an amount equal to the Fees paid by Company to BCG for the Service or Deliverable that gave rise to the claim.
- 9.4** Notwithstanding anything else to the contrary, in respect of a defaulting Party, nothing in these Terms limits or excludes liability for: (i) personal injury or death caused by the defaulting Party's negligence; (ii) fraud; or (iii) any matter for which it would be illegal to exclude or limit liability. Nothing herein limits Company's obligation to pay the Fees for Services performed.

## **10. GENERAL PROVISIONS**

- 10.1** **Diversity.** BCG believes that diversity contributes to excellence. As a matter of policy, BCG staffs its teams with an appropriate mix of consultants from its offices around the world, without regard to gender, race, sexual orientation, religion or other protected class or characteristics.
- 10.2** **Compliance with Law.** BCG will comply with all BCG Laws. Company will comply with all Company Laws and will operate and utilize the Services and Deliverables in a manner that complies with all such laws and regulations, including without limitation, export restriction.
- 10.3** Company acknowledges and agrees that BCG does not provide fairness opinions or valuations of market transactions or legal, accounting, or tax advice. Company agrees that it will retain its own experts in these disciplines as it deems necessary. If the tax implications of the Engagement create, or otherwise trigger, a regulatory disclosure requirement, including but not limited to disclosure under the EU Mandatory Disclosure Regime pursuant to EU Council Directive 2018/822 ("DAC 6"), Company acknowledges that such disclosure is the obligation of Company's tax and financial advisors, agrees to work with its tax and financial advisors to satisfy such regulatory requirement(s), and will provide BCG written evidence of filing prior to any filing deadline. BCG will make best efforts to notify Company and confirm information for disclosure if it believes a regulatory disclosure is required.

Company will have five business days from such Notice to disagree with this assessment or demonstrate compliance with such requirement. In any event, BCG will make such regulatory disclosures as it determines, in good faith, are required by law.

- 10.4 Dispute Resolution.** If a dispute arises out of or in connection with the Engagement, a Party will be entitled to refer the dispute by written notice ("Dispute Notice") for resolution by the Parties' respective project managers who will meet to resolve the dispute within 15 business days of the date of such Dispute Notice. If the Parties fail to resolve the dispute within 15 business days of the date of the Dispute Notice, the dispute will then be automatically referred to a senior representative of each Party, who will meet to resolve the dispute within 30 business days of the date of the Dispute Notice. If the dispute cannot be resolved in accordance with this Section within 30 business days of the date of the Dispute Notice, the Parties may start proceedings. Nothing in the Agreement limits or in any way restricts the ability of a Party to seek injunctive relief in a court or other judicial body.
- 10.5 No Publicity.** No Party will make any public announcement or press release regarding the Engagement or Services performed without the prior written consent of the other Party; provided, however, BCG has the right to refer to Company as a client of BCG for promotional purposes. Except as required by law, neither BCG Deliverables nor reference to BCG may be included or made in any prospectus, proxy statement, offering memorandum or similar document or materials prepared for public distribution.
- 10.6 Restrictions on Personnel.** BCG will not assign consultants who have worked with Company to provide services to a direct competitor of Company, where the services to be provided are substantially similar to the Services BCG performs for Company under the Proposal Letter. This restriction will last for 12 months from the conclusion of the individual's work with Company on the Engagement. This restriction will not apply to any senior professionals who serve as BCG practice area leaders ("PALs"), topic leaders, topic experts or advisors, including data scientists and BCG digital, analytical data, and software developers. Involvement of an individual in the Engagement will not preclude that individual from working for other clients in Company's industry. During the term of the Engagement and for one (1) year thereafter,

neither Party will directly approach, counsel, or attempt to induce any person who is actively involved in the performance or review of the Services, to leave the other Party's employ or engagement, nor hire such person without the other Party's prior written consent, except that this Section will not restrict the employment of any person as a result of that person making an unsolicited response to a bona fide and published general recruitment advertisement not specifically directed at such person.

- 10.7 Governing Law.** The Agreement is governed by and construed in accordance with the laws of the country in which Company is located. The Parties agree to submit to the exclusive jurisdiction of the courts of that country. If the Proposal Letter is executed in the United States, the Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction will be disregarded), and the Parties agree to submit to the exclusive jurisdiction of the Commonwealth of Massachusetts and agree not to plead or claim that any such action has been brought in an inconvenient forum.
- 10.8 Severability.** The provisions of the Agreement will be deemed severable, and the invalidity or unenforceability of any one or more of its provisions will not affect the validity and enforceability of its other provisions. If any provision is held to be invalid, void, or unenforceable, the remaining provisions will continue in full force. In lieu of any invalid provision, a substitute provision will apply retroactively which comes as close as legally and commercially possible to the intent which the Parties had or would have had, according to the spirit and purpose of the Agreement.
- 10.9 Notices.** All Notices required or permitted under the Agreement will be in writing, reference the Proposal Letter and will be delivered to the Parties at the addresses referenced in the Proposal Letter: (a) by hand (and will be deemed to have been received on signature of a delivery receipt or at the time the Notice is left at the proper address); or (b) by certified mail or deposit with a nationally recognized overnight carrier (and will be deemed delivered at 9.00am on the second business day after depositing or, if earlier, the time recorded by the mail service); or (c) if sent by email, at the time of transmission, or, if this time falls outside

business hours in the place of receipt, when business hours resume.

**10.10 Relationship of the Parties.** BCG is an independent contractor. Nothing in the Agreement will be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligation or liability upon any Party. No Party is authorized to enter into or incur any agreement, commitment, obligation, or liability in the name of, or on behalf of, the other Party.

**10.11 Third Party Beneficiaries.** The Agreement exists solely for the benefit of the Parties to the Proposal Letter. Only a Party, or in the case of BCG its Affiliates, may enforce the terms of the Agreement in respect of the relevant Engagement. The Parties to the Proposal Letter do not intend to confer any right or benefit in connection with the Proposal Letter on any third party, except that a Party's Affiliates can enforce their rights to be indemnified pursuant to sections 8.2 and 8.3.

**10.12 Waiver.** The delay or failure of a Party to insist upon or enforce the other Party's strict performance of any provision herein, or to exercise any right or remedy under the Agreement, will not be interpreted or construed as a waiver of that Party's right to assert or rely upon any such provision, right or remedy in that, or any other, instance.

**10.13 Force Majeure.** Except for the obligation to pay the applicable Fees when due, no Party will be liable to any other Party for failure or delay in performance caused by a Force Majeure Event, and such failure or delay will not constitute a material breach of the Agreement.

**10.14 Survival.** All provisions of the Agreement which are by their nature intended to survive the expiration or termination of the Engagement will survive, including but not limited to Sections 2.3 (Effect of Termination), 3 (Intellectual Property Rights), 5 (Fees and Payment), 6 (Confidentiality), 8 (Indemnity), 9 (Limitation of Liability), 10.3 (Dispute Resolution), 10.5 (No Publicity), 10.6 (Restrictions on Personnel), 10.7 (Governing Law), 10.8 (Severability), 10.9 (Notices), 10.11 (third party Beneficiaries), 10.12 (Waiver), 10.14 (Survival) and 10.15 (Remedies Cumulative).

**10.15 Remedies Cumulative.** Except as otherwise provided in the Agreement, the remedies

specifically provided for herein are intended to be cumulative and will not be deemed to exclude any other right or remedy that a Party may have at law or in equity.

**10.16 Assignment.** A Party may assign its rights under the Agreement to any person or entity in connection with a merger, acquisition or sale of all or substantially all of its assets to which the Agreement pertains, provided that, in the case of an assignment by Company, Company is not permitted to assign such rights to a competitor of BCG. BCG is expressly permitted to assign its rights under the Agreement to any of its Affiliates. Except as specifically provided in this section, no Party will voluntarily, by operation of law, or otherwise, assign any rights or delegate any obligations under the Agreement, other than the right to receive payments, without the prior written consent of the other Party, and any attempt to do so is void. The Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

**10.17 Entire Agreement.** The Proposal Letter signed by the Parties, these Terms, and any mutually agreed schedules, contain the entire agreement and understanding by and between the Parties with respect to the Engagement to the exclusion of all other terms, including, but not limited to, any purchase order or other standard terms of Company. No prior representations, promises, agreements, or understandings, whether written or oral, will be of any force or effect. No change or amendment is binding on any Party unless in writing and signed by both Company and BCG. In the event of conflict between these Terms and the Proposal Letter, the provisions of these Terms will prevail, unless expressly varied in the Proposal Letter.

**10.18 Counterparts.** The Parties agree that the Proposal Letter may be executed in counterparts, each of which will be deemed an original, but which together constitute one and the same instrument.

**10.19 Interpretation.** There is no rule of interpretation against the drafter in drafting these Terms. Both Parties acknowledge they have had ample time to review and negotiate the Terms and have had the opportunity to review the Terms with their respective legal advisers.

**SCHEDULE 1  
DEFINITIONS**

1. **“Affiliate(s)”** means with respect to a Party, any entity that, now or in the future, owns, or is owned by or is under common ownership with, such Party. For the purposes of this definition, “ownership” means control of more than a 50% interest of an owned entity or the ability to direct the actions of an owned entity according to the desires of the owning entity.
2. **“Aggregated Data”** means de-identified, sanitized or anonymized data that is derived from multiple data sets and Company Data, but excludes Company Personal Data.
3. **“Applicable Laws”** means any and all laws or regulations applicable to the Parties’ respective businesses including without limitation, DAC 6, all privacy, database, copyright, trademark, patent, trade secret, export, and any applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, including the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, each as amended and updated from time to time.
4. **“Background IPR”** means any IPR: (i) developed by a Party independently of the Engagement; or (ii) owned by a Party, or licensed to such Party (other than by the other Party), at the commencement date of the Engagement, including any and all derivative works including modifications or enhancements to the same made before, during, and after the Engagement.
5. **“BCG”** means, collectively, BCG Inc. and other entities (including BCG UK) providing Services to Company.
6. **“BCG Inc.”** means The Boston Consulting Group, Inc., with a registered office at 200 Pier 4 Boulevard, 10<sup>th</sup> Floor, Boston MA 02210 or such other address as BCG Inc. may provide by Notice.
7. **“BCG Laws”** means any Applicable Laws that apply to BCG in its capacity as a provider of management consultancy and digital services.
8. **“BCG Product(s)”** means BCG proprietary tools which BCG may grant access to and use of by Company during the course of the Engagement.
9. **“BCG UK”** means Boston Consulting Group UK LLP, with its registered office being 20 Manchester Square, London W1U 3PZ, or such other address as BCG UK may provide by Notice.
10. **“Company”** means the entity named in the Proposal Letter, which will be the recipient of the Services provided by BCG.
11. **“Company Data”** means the original data or information, in any form, that is provided to BCG by or on behalf of Company (including Company Personal Data and excluding Aggregated Data).
12. **“Company Laws”** means any and all Applicable Laws that are not BCG Laws.
13. **“Company Personal Data”** means the information, in any form, provided to BCG by or on behalf of Company that alone, or in combination with other information: (a) is considered personal data or personal identifiable information under the applicable data privacy laws; or (b) identifies or could be reasonably used to identify an individual data subject, including names, addresses, email addresses (beyond log-on business email), telephone numbers, Social Security numbers, government identification numbers or any other personally identifiable information.
14. **“Confidential Information”** means any trade secrets or other information that is disclosed by one Party to the other Party under the Agreement and that is either (a) conspicuously marked or otherwise identified as confidential or proprietary at the time of disclosure; or (b) is reasonably understood to be confidential based upon the nature of the information disclosed or the circumstances of the disclosure. Confidential Information may be of a technical, business, or other nature (including, but not limited to, information which relates to a Party’s technology, research, development, products, services, pricing of products and services, customers, employees, contractors, marketing plans, finances, contracts, legal affairs, or business affairs). Confidential Information *excludes* Aggregate Data and algorithms, source or object code contained in Foreground IPR assigned by BCG to Company or Software Deliverables.
15. **“Deliverable(s)”** means (i) final versions of presentations, reports, films, sound and video recordings prepared during the Engagement; and (ii) Software Deliverables together with other material that BCG provides to Company (if any), as described in the Proposal Letter and agreed in writing to be delivered by BCG as part of the Services.



16. **“Force Majeure Event”** means an act of God, fire, flood, storm, revolution, act of terrorism, riot or civil commotion (but excluding strikes and industrial disputes of the affected Party or a subcontractor of that Party and any failures of power or other utilities), or any event beyond the control of a Party.
17. **“Foreground IPR”** means all IPR resulting directly from and created or acquired by BCG during the Engagement, except: (i) Background IPR; and (ii) third party IPR.
18. **“Insolvency Event”** means, in relation to a Party, (a) that Party passes a resolution for its winding-up (except in connection with a solvent business reorganization) or a court of competent jurisdiction issues an order for the winding-up of that Party or the dissolution of that Party; (b) an administrator, receiver or an administrative receiver or manager is appointed over the whole or substantial part of that Party’s assets; (c) that Party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; (d) that Party is unable to pay its debts (provided that there will be no need for a determination by a court); or (e) any event occurs, or proceeding is taken, with respect to that Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (d) (inclusive) above.
19. **“IPR”** means all intellectual property rights, including all copyright, trademark, trade name, or patent rights (whether registered or unregistered, and any applications for the foregoing), trade secrets, technical secret, inventions, know-how, and any other proprietary rights of any kind and all rights to enforce the foregoing.
20. **“Losses”** means any demand, losses, damages, debts, costs, including reasonable legal costs and disbursements, and expenses.
21. **“Non-Software Deliverable(s)”** means any Deliverables that are not Software Deliverables or BCG Products.
22. **“Party” or “Parties”** means BCG and Company.
23. **“Permitted Affiliates”** means such of Company's Affiliates listed in the Proposal Letter or otherwise agreed in writing by the Parties.
24. **“Permitted Users”** means those of Company’s employees who have a need to access BCG Products in connection with the purpose of the Engagement and are specified in the Proposal Letter or those of Company’s employees or third parties approved by written authorization of BCG to access BCG Products.
25. **“Proposal Letter”** means the letter or other document signed by the Parties that describes the specific Services and Deliverables to be delivered by BCG to Company as part of the Engagement.
26. **“Services”** means the services to be provided by BCG to Company, including, if relevant, use or access to any BCG Products, as described in the Proposal Letter.
27. **“Software Deliverable(s)”** means those Deliverables or aspects of Deliverables comprised of software in object code or source code written by BCG, together with APIs, schematics, tools, software development kits, algorithms, developments, formulas, improvements, processes, suggestions, and techniques related to such software. Software Deliverables also include platforms running specific analytic algorithms, portals supporting new digital journeys, applications visualizing and supporting decisions, and any hardware and hardware configurations or information related to data center operations. Software Deliverables may be proofs of concept (“POCs”), prototypes, minimum viable products (“MVPs”) or fully productive systems. For avoidance of doubt, the Software Deliverables **do not** include BCG Products and are not Company’s Confidential Information.
28. **“Specifications”** means such written documentation related to BCG Products, Software Deliverables or other Deliverables containing technical instructions, minimum technical requirements, or describing functional operations. Specifications may be in the form of a user manual (in the case of BCG Products) or other written form including as part of the Proposal Letter and may be updated by BCG from time to time.
29. **“Third-Party Material(s)”** means any third party content, including networks, equipment, data, managed services, hosted platforms, hardware, software, free software or freeware, and open source software and other technology or services developed, owned, provided or licensed by a third party, other than Company or BCG.
30. **“Warranty Period”** means thirty (30) days from the date of delivery of the applicable Deliverable or BCG Product by BCG to Company.