

**ASSESSMENT/DIAGNOSTIC PHASE  
LETTER OF AGREEMENT PREPARED FOR  
[CLIENT FULL LEGAL NAME]  
PROJECT CODE: [OUR PROJECT CODE]**

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This letter of agreement (**LOA**) is entered into between:

- 1) **[CLIENT LEGAL ENTITY NAME]** [(company registration number **[INSERT]**)], of **[INSERT CLIENT LEGAL ENTITY REGISTERED ADDRESS]** (**[Client]**); and
- 2) **Newton Europe Limited** (company registration number 04279175), of 2 Kingston Business Park, Kingston Bagpuize, Abingdon, Oxfordshire, OX13 5FE (**Newton**).

The definitions set out in Clause 15 or set out below in bold will apply in this LOA.

## **1 Assessment Background and Objectives**

1.1 **[Client]** and Newton have worked together to develop an assessment to identify potential Benefits within **[Client]**'s **[e.g. Adult Social Care service/ X site]**, focussing on the following areas:

1.1.1 **[...insert]**

(the **Assessment**).

1.2 The Assessment will include the following activities:

1.2.1 identification, prioritisation and detailed understanding of the areas of potential improvement using existing data, live studies and discussion with members of **[Client]**'s team;

1.2.2 quantification of the potential that exists within each **[function / department / site ...]** and detail of the specific operational problems that need to be addressed to deliver this;

1.2.3 development of a project plan with clear performance targets together with resource requirements, owners, and timescales agreed with the management team;

1.2.4 identification of opportunities to work with and/or train **[Client]** staff as part of the implementation process; and

1.2.5 developing a vision for change that links to the organisational strategy and the **[Client]** team can believe in,

(the **Assessment Objectives**).

1.3 The output from the Assessment will be a detailed improvement plan and supporting business case, developed by Newton and **[Client]** in partnership, to implement operational improvements in order to deliver Benefits in a subsequent implementation phase of work.

1.4 **[The parties acknowledge that the services provided by Newton pursuant to this LOA are advisory in nature and that final responsibility for all business decisions and decisions on improvement actions rests solely with [Client].]**

## **2 Duration and Plan**

2.1 Newton **[will use reasonable efforts to begin OR began]** work on the Assessment on **[DATE]** and this LOA will take effect from that date. It is anticipated that the Programme will be completed on or around **[DATE]**, unless otherwise agreed between the parties.

2.2 Figure 1 below outlines the anticipated broad structure of the Assessment. [Client] and Newton will work together to diarise key stakeholder meetings before starting the Assessment.

Overview:	We will aim to complete the Assessment within [10] working days.
Pre-Assessment communications:	A successful Assessment brings together and motivates staff from all levels of an organisation. Ensuring engagement across [Client] will be critical to maximising the success of the Assessment and any subsequent implementation programme. This is greatly assisted through planned briefings and other communications prior to Newton commencing site work.
Assessment planning session:	Day 1: Session with [Client] Assessment lead to provide Newton with appropriate background to any existing work, data analysis, and understanding already developed. This session can be used to define precisely the Assessment scope and clarify objectives. This session should include a brief of all [Client] staff relevant to the Assessment. Typical duration: 2 hours.
Kick-off session:	Day 1: Kick-off session with the wider relevant staff (if possible) to introduce ourselves, explain the purpose and approach for the Assessment and deal with any questions or concerns. Typical duration: 0.5 hours.
Core Assessment work:	<p>Newton will work alongside the local team, with minimum disruption, to collect and analyse historical and live performance data, to assess the drivers to current operational performance levels, and to prioritise opportunities for improvement.</p> <p>Our time will be split between analysing existing historical data and spending time within the operation, understanding the current processes and carrying out detailed studies of process performance.</p>
Meetings with key stakeholders:	In order to fully understand the [Client]'s operations, strategy, and priorities, it is essential that the Newton team have time face-to-face with key directors and function/department personnel. Key stakeholders will be identified as part of pre-planning with [Client].
Regular interim reviews:	Depending on the availability of the management team, we would ideally hold a 20-minute wash up session at the end of every other working day, to review progress, sense-check

	results to ensure we do not waste time on incorrect information and ensure there are no surprises for either party at the final review.
Final review:	Typically, an Assessment review will be held with the senior management team on the last day of the Assessment. We will use the session to review the Assessment results and finalise the plan for delivering the identified opportunities.

Figure 1 – Assessment Outline

2.3 The initial plan to deliver the Assessment is below. [It is intended that this plan will iterate as the Assessment progresses, with the agreement of [Client] and Newton]:

	13-Jan-14	14-Jan-14	15-Jan-14	16-Jan-14	17-Jan-14	18-Jan-14	19-Jan-14	20-Jan-14	21-Jan-14	22-Jan-14	23-Jan-14	24-Jan-14	25-Jan-14	26-Jan-14	27-Jan-14	28-Jan-14	29-Jan-14	30-Jan-14	31-Jan-14	01-Feb-14	02-Feb-14	03-Feb-14	04-Feb-14	05-Feb-14	06-Feb-14	07-Feb-14	08-Feb-14	09-Feb-14	10-Feb-14	11-Feb-14	12-Feb-14	13-Feb-14	14-Feb-14	15-Feb-14	16-Feb-14	17-Feb-14	18-Feb-14	19-Feb-14	20-Feb-14	21-Feb-14	22-Feb-14	23-Feb-14	
Assessment Workstreams																																											
Top Level Overview - Head Office																																											
1. Customer Service																																											
2. Product Range & Inventory Control																																											
3. Asset Management																																											
4. Procurement																																											
5. Operations																																											
6. Delivery of Operational Element of Business Strategy																																											
Assessment Reviews																																											
Assessment Kick Off																																											
Assessment Progress Reviews																																											
Monthly PLC Board																																											
Final Assessment Review																																											

Figure 2 – Draft Assessment Plan

2.4 Notwithstanding the above, [Client] and Newton each agree that:

- 2.4.1 it may be necessary to extend the scope of the Assessment into further areas not specifically covered in this LOA to achieve the Assessment Objectives. If this results in additional fees being payable by [Client], [Client] approval will be sought before any additional work is done; and
- 2.4.2 if [Client] requests Newton to perform any work beyond the scope of the Assessment outlined above, such work will be charged for separately (and will be the subject of a separate LOA to be agreed prior to undertaking such work).

### 3 Engagement

3.1 Newton and [Client] each agree that, in order to achieve the Assessment Objectives, they will work on the Assessment together, in partnership, and will each provide all appropriate assistance, engagement, data and resources.

3.2 [In particular, [Client] agrees that it will provide:

3.2.1 [INSERT].

### 4 Resourcing

4.1 The following key personnel will be responsible for the overall delivery of the Assessment:

4.1.1 for [Client]: [Name]; and

4.1.2 for Newton: [Name],

(the **Key Personnel**).

4.2 The full involvement of [Client] staff will be key to ensuring the success of the Assessment and maximising the benefit to [Client] and their personnel. Prior to the start of the Assessment, [Client] and Newton will work together to determine the most appropriate and effective steps to maximise engagement with the [Client] team, including where required communications before starting on site.

4.3 [Client] and Newton will each appoint an **Assessment Manager** who will be the day to day principal point of contact for the Assessment.

4.4 Each Assessment workstream will also have a [Client] and Newton owner who will be jointly responsible for delivery of the Assessment.

4.5 Newton Resources:

4.5.1 Newton will resource the Assessment with a team of high-quality, skilled Consultants, with input and resource from specialists where needed;

4.5.2 Subject to Clause 4.5.3, Newton's personnel typically work full time on [Client]'s site with [Client]'s team; and

4.5.3 Newton personnel normally spend approximately 2 days per month carrying out off site Assessment work, reviewing the Assessment and carrying out development activities as required. This is typically done on every other Friday.

4.6 [Client] Resources:

In order to maximise the understanding and engagement, and to minimise costs whilst ensuring the best results, [Client] will provide appropriately skilled resources to support the Assessment. The following are the approximate commitments needed from the [Client] team during the Assessment:

4.6.1 Key team members for the kickoff meeting, typically [5-10] people, on day 1;

4.6.2 Ideally [1-2 people half time] to be close to the Assessment work and help direct Newton to the right people for information etc. This both helps progress and starts to share the Newton approach with the local team;

4.6.3 Ad-hoc time with people 1-to-1 during the Assessment to understand operational detail, typically once or twice for 30 minutes to an hour for [10-15] people;

4.6.4 A few key people to attend the daily wash ups and [weekly] Assessment progress reviews;

4.6.5 An open forum in the second half of the Assessment, delivered with [x –Client lead] for [Client] staff to discuss the rationale for the work and where they would like to see it take them; and

4.6.6 Key team members and the senior management for the final review session, typically [4-8] people for up to 2 hours. The attendees would typically include the [Client] Assessment lead,

the [Client] finance director, the [Client] leads for individual Assessment streams, the Newton Assessment stream leads, the Newton Assessment lead and Newton Director.

- 4.7 If the agreed resources outlined above are not provided in line with the Assessment's planned timescales this will have a negative impact on the Assessment's timeline and or output. In this scenario, Newton reserve the right to increase the cost of the Assessment (with the agreement of [Client], not to be unreasonably withheld) or reduce the scope of the Assessment and its output.

## 5 [Security Clearance]

- 5.1 The parties acknowledge that Newton personnel working with [Client] on the Assessment must hold a suitable level of National Security Vetting according to the relevant information security classifications applicable to the Assessment. In accordance with HMG Personnel Security Controls (as updated from time to time), this will require vetting at [Security Check (SC)] clearance level as a minimum.
- 5.2 Certification of security clearance must be shared with [Client]'s security team in advance of arrival on [Client]'s site to enable access to the relevant sites and data. Certification is also necessary in advance of an individual's project start date to enable onboarding and access to [Client] hardware.]

## 6 Fees and Expenses

- 6.1 The **Fees** are £[INSERT] excluding VAT and expenses (subject to any adjustment in accordance with this LOA) and are based on the anticipated time required to achieve the Assessment Objectives.
- 6.2 Expenses are charged separately and in addition to the Fees and include travel, subsistence and accommodation. All expenses are recharged at cost, except mileage which will be recharged at 54p/mile. There are no administrative or other additional costs added to the expenses.
- 6.3 [Client] will pay the Fees and expenses to Newton as set out in Clause 7.
- 6.4 [For this Assessment, expenses will be capped at a maximum of 10% of Fees (i.e. £[X] plus VAT).]

## 7 Invoicing

- 7.1 All invoices will be addressed to [FULL CLIENT LEGAL NAME].
- 7.2 Where [Client] requires invoices to state a Purchase Order number, [Client] will be responsible for ensuring this is issued to Newton in time to be included on the first invoice.
- 7.3 Fees will be invoiced in line with the fixed invoicing schedule below:

Month worked	Invoice date	Fee (before VAT & expenses)	Payment to be received by
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[October 2020]	[1 <sup>st</sup> October 2020]	£[X,XXX]	[31 <sup>st</sup> October 2020]

- 7.4 Expenses will be invoiced on or around the 15<sup>th</sup> of the month following the month in which they are incurred.
- 7.5 Unless otherwise stated in this LOA, all invoices will be due for payment 30 days after the date of invoice.
- 7.6 Value Added Tax (VAT) will be added to invoices as applicable.
- 7.7 Newton reserves the right to charge [Client] interest on invoices that are overdue at the rate of 3% per annum above the base rate of Barclays Bank Plc accruing from day to day from the date payment is due until payment is made in full.

## 8 [Assurance]

Newton does not undertake or charge for work where the benefit to its client does not at least exceed the fees to deliver that benefit. Accordingly, the Fees will be waived if Newton are unable to present a project plan at the end of the Assessment with targets to deliver [annualised] savings above the fees to deliver such a project [and the Fees for this Assessment]. If, however, improvement opportunities are identified by the Assessment that [on an annualised basis] exceed the Fees in isolation but do not warrant a full improvement project then the Fees will remain payable.]

## 9 Termination

- 9.1 Termination on notice - Either party may terminate this LOA at any time by giving the other not less than [four] weeks' written notice.
- 9.2 Termination for breach – Either party shall have the right, by serving written notice at any time, to terminate this LOA with immediate effect in any of the following events:
- 9.2.1 if the other party commits any material breach of any of the provisions of this LOA and, if the breach is capable of remedy, the other party fails to cure that breach within thirty (30) days after the date of a written notice from the non-breaching party referring to this clause 9.2 and giving notice of that party's intention to terminate unless that breach is remedied within that time; or
- 9.2.2 if the other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 or 286 of the Insolvency Act 1986 (but for this purpose not including the reference to “if it is proved to the satisfaction of the Court that” contained within section 123(1)(e) and 123(2) (or any statutory modification or re-enactment of the same); or takes any formal step in an insolvency process such as passing a resolution for winding-up or

convening a meeting of its creditors or similar; or suffers any insolvency or similar action by a third party such as the presentation of a winding-up petition[./; or]

**INCLUDE THE FOLLOWING ADDITIONAL CLAUSE WHERE THE CLIENT IS A COUNCIL**

- 9.2.1 in the case of [Client], if its Chief Financial Officer has been required to issue a Notice under Section 114 of the Local Government Finance Act 1988 or the local auditor has served on it an advisory notice and it has within 21 days thereof failed to achieve a balanced budget, or the Secretary of State has exercised its powers to direct or intervene pursuant to the Local Government Act 1999.]

**INCLUDE THE FOLLOWING ADDITIONAL CLAUSE WHERE THE CLIENT IS AN NHS BODY (NHS TRUST OR CCG)**

- 9.2.2 [in the case of [Client], it is or is reasonably anticipated to, enter special administration within Chapter 5A of the National Health Service Act 2006 or NHS England has taken formal intervention action under section 14Z21 of the NHS Act 2006 because the [Client] is either failing or at risk of failing to discharge its functions or takes any formal step in an insolvency process or suffers any insolvency or similar action by a third party.]
- 9.3 For the purposes of Clause 9.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

## **10 Consequences of Termination**

- 10.1 If this LOA is terminated before the Assessment has been completed, then [Client] will pay Newton for work done up to the date of termination [and any fee guarantee or assurance mechanism agreed will no longer apply].

## **11 Liability**

- 11.1 References to liability in this Clause 11 include every kind of liability arising under or in connection with this LOA, including but not limited to liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.
- 11.2 Neither party excludes or limits its liability in respect of death or personal injury which results from its negligence, fraud or fraudulent misrepresentation by it or its employees or any other liability which cannot be excluded as a matter of law.
- 11.3 Subject to Clause 11.2 and 11.5, each party's total liability arising under or in connection with this LOA shall be limited to an amount equal to the Fees paid to Newton by [Client].
- 11.4 Subject to Clause 11.2 and 11.5, neither party is liable for the following kinds of losses arising under or in connection with this LOA:
- 11.4.1 loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, in each case whether direct, indirect or consequential; or

11.4.2 indirect or consequential loss.

11.5 Nothing in this Clause 11 shall limit [Client]'s payment obligations under this LOA.

## **12 Confidentiality**

12.1 Each party will protect the confidentiality of the other party's Confidential Information and will not disclose the other party's Confidential Information to a third party except as permitted in this LOA or with the prior express permission of the other party.

12.2 Each party must only use the other party's Confidential Information for the purposes of this LOA and may only disclose the other party's Confidential Information:

12.2.1 to its staff, group companies, professional advisers and any third parties who have entered into binding obligations of confidence equivalent to those set out in this LOA, and who have a specific need to use it for the purposes of this LOA or the Assessment. Any such party will remain liable for the failure of its staff or group companies to adhere to the terms of this Clause 11.1; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Notwithstanding anything to the contrary, any NDA or confidentiality agreement signed by the parties which relates to this LOA or the Assessment shall cease to apply and be superseded by this LOA.

12.4 [The parties each acknowledge that during the term of this LOA and afterwards, Newton may be engaged by different clients working in similar industries. In these circumstances, Newton will ensure that the confidentiality of [Client] Confidential Information is maintained and will use all reasonable efforts to ensure that any Newton consultant who had access to Confidential Information about one client will not be assigned to work on an assignment with another client where such Confidential Information could be used to the material competitive disadvantage of either client.]

## **13 Data Protection**

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

13.2 All capitalised terms used in this Clause 13 which are not otherwise defined in this LOA shall have the meanings given to them in the Data Protection Legislation.

13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, [Client] is the Data Controller and Newton is the Data Processor.

13.4 The Personal Data which may be processed by Newton pursuant to this LOA will include the names and contact details of [Client]'s staff.

- 13.5 Without prejudice to the generality of Clause 13.1, [Client] will ensure that it has obtained and provided all necessary appropriate consents and notices to enable lawful transfer of the Personal Data to Newton for the duration and purposes of this LOA.
- 13.6 Without prejudice to the generality of Clause 13.1, Newton shall, in relation to any Personal Data processed in connection with the performance by Newton of its obligations under this LOA:
- 13.6.1 process that Personal Data only on the written instructions of [Client] unless Newton is required by any applicable laws to process that Personal Data otherwise;
  - 13.6.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
  - 13.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 13.6.4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of [Client] has been obtained and the following conditions are fulfilled:
    - a) [Client] or Newton has provided appropriate safeguards in relation to the transfer;
    - b) the data subject has enforceable rights and effective legal remedies;
    - c) Newton complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - d) Newton complies with reasonable instructions notified to it in advance by [Client] with respect to the processing of the Personal Data;
  - 13.6.5 assist [Client], at [Client]'s cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessment and consultations with supervisory authorities or regulators;
  - 13.6.6 notify [Client] without undue delay on becoming aware of a Personal Data Breach; and
  - 13.6.7 at the written direction of [Client], delete or return the Personal Data and copies thereof to [Client] on termination of this LOA, unless required by applicable law to store the Personal Data.

- 13.7 Either party may, at any time on not less than 30 days' notice, revise this Clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall, when replaced, apply as an attachment to this LOA).

## 14 General

- 14.1 This LOA, together with any documents referred to within it, is the entire agreement between the parties, and supersedes all prior agreements, promises, discussions, assurances, warranties, representations and understandings between them relating to its subject matter.
- 14.2 Following signature of this LOA, if [Client] requests that Newton provide the services to or invoice a different legal entity to [Client], in addition to [Client] itself, and Newton agrees in writing to do so, [Client] shall procure that the entity notified shall be responsible, together with [Client], for performing [Client]'s obligations and being subject to the terms, set out in this LOA.
- 14.3 Each party will act in good faith toward the other party in relation to this LOA and the progress of the Assessment.
- 14.4 Subject to Clause 13.7, no variation of this LOA shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.5 [Client] may accept this LOA by signing and returning a copy to Newton. Transmission of the executed signature page of a counterpart or duplicate of this LOA by email (in PDF, JPEG or other similar digital format) shall take effect as transmission of an executed "wet ink" counterpart or duplicate of this LOA.
- 14.6 Unless it expressly states otherwise, this LOA does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this LOA. The rights of the parties to rescind or vary this LOA are not subject to the consent of any other person.
- 14.7 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 This LOA and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this LOA or its subject matter or formation.

## 15 Definitions

- 15.1 The following definitions will apply in this LOA:
- 15.1.1 **Benefit** means an operational or other change which is capable of leading to an improvement (for example, in capacity, resource, outcomes or efficiency);

15.1.2 **Confidential Information** means trade secrets and other confidential information which relates to, or is disclosed by, a party or its group companies including (but not limited to) financial, staff, management, technical, customer and supplier information, business strategies, business plans, internal systems and know how. However, Confidential Information shall not include any information which is:

- a) or becomes public knowledge other than by any act or failure to act by the recipient party;
- b) already known to the recipient party (as evidenced by its written records) and was not acquired directly or indirectly from the disclosing party or is not otherwise subject to an obligation of confidentiality;
- c) acquired by the recipient party from any third party who did not acquire such information directly or indirectly from the disclosing party in breach of any obligation of confidence; or
- d) independently developed by, or for the recipient party by a third party, without access to the Confidential Information;

15.1.3 **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**This LOA has been entered into on the last date stated below.**

Signed:

Signed:

.....

.....

For and on behalf of

For and on behalf of

**Newton Europe Limited**

**[CLIENT LEGAL ENTITY NAME]**

Name:

Name:

Position:

Position:

Date:

Date: