

CONSULTANCY CONTRACT

Commercial-in-Confidence

Date:	18th July 2017
LUEL:	Loughborough University Enterprises Limited (LUEL) Enterprise Office, Loughborough University, Ashby Road, Loughborough, Leicestershire LE11 3TP United Kingdom Company No. 3139948
CLIENT:	Department of Health NHS Estates & facilities Efficiency and Productivity Div Room 1N10 Quarry House Leeds LS2 7UE Company No:
Quote No:	8386
Consultancy Services:	Critical Infrastructure Risk: A Quantitative and Qualitative Review of NHS Trust Practices
Work Schedule:	Planned Activities and Resources for Stages 1 - 3 can be found at Annex A
LUEL Lead:	██████████
CLIENT Lead:	██████████ Tel: ██████████ E-mail: ██████████
The Fee:	██████████
Payment Terms:	The amounts due under this Consultancy Contract will be invoiced by LUEL upon completion of the SERVICES or sooner if requested by the CLIENT
Start Date:	24/07/17
End Date:	24/11/17
CLIENT Contact:	██████████
Details:	Tel: ██████████ E-mail: ██████████
LUEL Contact:	██████████
Details:	Tel: ██████████ Email: ██████████
Conditions of Contact:	All work is undertaken in accordance with LUEL's Terms and Conditions for Services, a copy of which is attached.
Note:	By signing this Consultancy Contract each signatory represents that they are authorised to sign on behalf of their Party. The commencement date of this Consultancy Contract will be the Start Date or if no Start Date is specified the last date on which the Consultancy Contract has been signed by ALL the Parties.
Special terms:	Not Applicable

If this Consultancy Contract and the Terms and Conditions are acceptable please email and/or post a signed copy of the Consultancy Contract together with a Purchase Order addressed to LU Enterprises Limited for the total Fee above. Upon receipt of the same, we shall inform the LUEL Lead Consultant to proceed. For the avoidance of doubt, any purchase order number quoted by the Client is for administrative purposes only and any associated purchase order Terms and Conditions shall not hold any validity other than monetary payment.

Signature
Loughborough University Enterprises Limited

Printed Name

Position

Date

██████████

██████████

Business Development Associate

18th July 2017

Signature
Client

Printed Name

Position

Date

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Critical Infrastructure Risk: A Quantitative and Qualitative Review of NHS Trust Practices

Table 1: Planned Activities and Resources for Stage 1

Stage 1: Data collection and initial desk-top analysis			
<p>The results of this collection will be cross referenced with other data including:</p> <ul style="list-style-type: none"> • CIR/Area metric; • Planned Backlog for (2017-18)/CIR; • Trust income; • PFI, PropCo and leased sites (as the NHS is not responsible for Backlog/CIR on these); • Historical and planned capital expenditure patterns; • Future planned changes to the estate e.g. STP's, and • Capacity to support capital investment. <p>The above analysis will be used to give a national Backlog and CIR situation and identify outliers:</p> <ul style="list-style-type: none"> • Low levels of historic capital investment compared to the size of their estate; • High levels of Backlog and/or CIR when they have invested heavily in their estate, or; • High levels of Backlog or CIR compared to their peer groups. • The outliers identified in Stage 1 will be investigated to ensure that they are actually outliers and their position as such is due to their underlying situation and not a result of poor quality data. On completion of the verification, trusts will be identified for further engagement. 			
Activity	Staff Resource		Other
	Senior (days)	Associate (days)	
Quantitative review of ERIC data to determine current levels of Critical Infrastructure Risk (i.e. total of High and Significant Backlog Maintenance) among NHS Trusts (i.e. excluding PFI).	■	■	
Explore relationships (i.e. trends) between current CIR and: previous CIR levels; asset age and spend on backlog maintenance. Explore high CIR sites and significant CIR changes.	■	■	
Develop a data collection strategy to be used in Stage 2 and Stage 3.	■		
Progress draft final report.	■	■	■ ■
Total	■	■	■

Table 3: Planned Activities and Resources for Stage 3

Stage 3: Engagement with selected NHS Estates & Facilities colleagues and other interested parties.			
<ul style="list-style-type: none"> • The interviews by phone and sites visits will target Sites with the highest CIR and probe further the information gathered via ERIC and the questionnaire survey. • Practices used in other sectors will be explored. • A workshop with key players will be used to validate the main findings. 			
Activities.	Staff Resource		Other
	Senior (days)	Associate (days)	
Interview by phone 12 Trusts/Sites to obtain a range of good practice where CIR has improved or remained low and examples where sites have high or rapidly increasing CIR.	■	■	■■■■ ■■■■
Qualitative analysis of interviews conducted by phone.	■	■	■■■■ ■■■■ ■■■■
A validation workshop with a mix (site type and different CIR strategies/level of) say 10-20 people. Analysis of feedback.	■	■	■■■■ ■■■■
Review of approaches to CIR by other sectors (for example defence, education, energy, transport and PFI) based on high level leads provided by NHS improvement.	■	■	
Draft final report.	■	■	
Final report and handover.	■	■	
Total	■	■	■■■■

Table 4: Total Planned Activities and Resources

Activities.	Staff Resource / Grade		Other	Total
	Senior (days)	Associate (days)		
Stage 1: Data collection and initial desk-top analysis.	██████████ ██████████	██████████ ██████████	████	██████████
Stage 2: Verification of data including assessment of Trusts' situations.	██████████ ██████████	██████████ ██████████	████	██████████
Stage 3: Engagement with selected NHS colleagues and other interested parties.	██████████ ██████████	██████████ ██████████	████	██████████
Total	██████████ ██████████	██████████ ██████████	████	██████████ ██████████ ██████████

LUEL Terms and Conditions for Services

1.0 DEFINITIONS

- 1.1 "LUEL" means Loughborough University Enterprises Limited, a wholly owned subsidiary company of Loughborough University, whose offices are located at the Enterprise Office, Ashby Road, Loughborough University, Loughborough, Leicestershire, LE11 3TU, UK.
- 1.2 "CLIENT" means a person and/or organisation to which LUEL is to supply the SERVICES.
- 1.3 "CONDITIONS" means the terms set out in this document.
- 1.4 "CONTRACT" means any written proposal and/or quotation supplied by LUEL which is signed by an authorised signatory of the CLIENT and LUEL.
- 1.5 "IP" means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country, and all applications for and rights to apply for or register those rights.
- 1.6 "SERVICES" means any and all services as set out in the CONTRACT.
- 1.7 "WORK SCHEDULE" means the program of work and deliverables as detailed in the CONTRACT for the performance of the SERVICES.

2.0 SUPPLY OF SERVICES

- 2.1 LUEL shall supply SERVICES to the CLIENT in accordance with the CONTRACT and subject to the WORK SCHEDULE and these CONDITIONS.
- 2.2 LUEL and the CLIENT shall each nominate a representative who shall be authorised to take decisions in connection with the SERVICES and WORK SCHEDULE.

3.0 ORDERS AND SPECIFICATIONS

- 3.1 The CLIENT is responsible for ensuring the accuracy and completeness of any order or any variation to any order (including but not limited to any applicable specification) submitted by the CLIENT and for giving LUEL sufficient information concerning the SERVICES and/or WORK SCHEDULE within a sufficient time to enable LUEL to perform the CONTRACT in accordance with its terms. For the avoidance of doubt, the CLIENT will inform LUEL in advance of any known safety hazards and/or particular handling requirements relating to any samples etc.
- 3.2 All information and any other materials and/or samples to be supplied to LUEL by the CLIENT in connection with the SERVICES shall be delivered and collected at the cost and risk of the CLIENT and in accordance with reasonable requirements of LUEL.
- 3.3 Whilst LUEL shall take every care not to lose or damage samples, the CLIENT acknowledges that the

mutilation of them may occur during and/or as a consequence of testing and therefore, LUEL is under no obligation to return the samples unless specifically requested to do so by the CLIENT and in which case the CLIENT will accept the sample in whatever condition it then is.

- 3.4 Any report which LUEL gives refers only to the sample reported upon and not to the bulk of which they form a part, and is not an opinion upon such bulk unless otherwise stated. When an opinion upon bulk is required this can only be given if the bulk is sampled by LUEL or by its representatives, or in certain cases inspected in full.

4.0 VARIATION AND CANCELLATION

- 4.1 Unless previously withdrawn, the CONTRACT is open for acceptance for a period of one (1) calendar month only from the date of issue if after such period LUEL at the request of the CLIENT agrees to carry out the work detailed in such lapsed CONTRACT these conditions shall apply thereto.
- 4.2 No variation to these CONDITIONS or SERVICES or WORK SCHEDULE shall be binding until agreed in writing between the authorised representatives of the CLIENT and LUEL.
- 4.3 No order may be cancelled by the CLIENT after it has been accepted by LUEL unless terminated in accordance with Clause 10.2 or 11.0.

5.0 INVOICING AND PAYMENT

- 5.1 LUEL will invoice the CLIENT for all sums due as specified in the CONTRACT Payment Terms.
- 5.2 The CLIENT will pay the invoice in full within thirty (30) days after the date of the invoice.
- 5.3 If the CLIENT fails to pay any invoice in full by the due date then without prejudice to any other right or remedy available to it, LUEL shall be entitled at its sole discretion and without further notice to do either or both of the following:
- 5.3.1 Cease to perform all or any part of the SERVICES.
- 5.3.2 Charge the CLIENT interest (both before and after any judgment) on the amount unpaid on a daily basis, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, until payment in full is made, such amounts being added to and deemed part of the sum due when payment is made.
- 5.4 For the avoidance of doubt, any purchase order number quoted by the CLIENT is for administrative purposes only and any associated purchase order Terms and Conditions shall not hold any validity other than monetary payment.

6.0 PUBLICATIONS AND INFORMATION ARISING/IP

- 6.1 All IP in the SERVICES will be owned by the CLIENT.
- 6.2 Subject to Clause 6.5, the CLIENT grants to LUEL a non-transferable, perpetual, royalty-free licence for

LUEL, the LUEL Lead and any employee and/or agents of LUEL to use and publish the results in the SERVICES for non-commercial use such as teaching and research.

- 6.3 Despite the terms of Clause 6.1 the CLIENT must not misrepresent any views or conclusions reached by LUEL and expressed in any written report and/or other written information supplied as part of the SERVICES; and no such misrepresented views or conclusions, or any such written information may be used in any legal proceedings as evidence of the facts or opinions stated by LUEL.
- 6.4 The CLIENT will not use Loughborough University and/or LUEL's logo or name in connection with any publicity or publication arising from the SERVICE without LUEL written permission.
- 6.5 LUEL, LUEL Lead or any employee and/or agent may not publish the results in the SERVICES without the CLIENT's prior written consent.

7.0 CONFIDENTIALITY

- 7.1 During the CONTRACT, LUEL and the CLIENT may exchange information which is of a secret or confidential nature ("INFORMATION"). To avoid any doubt, to be secret or confidential, such INFORMATION shall not (i) already be known to the recipient or; (ii) have entered into the public domain either (a) at the time of disclosure to the recipient or (b) subsequently through no fault of the recipient.
- 7.2 The recipient shall use reasonable endeavours to keep such INFORMATION confidential and to that end shall not, without specific prior written consent of the other party permit that information:
- 7.2.1 to be disclosed except to those who may need to have such INFORMATION in connection with the SERVICES;
- 7.2.2 to pass outside the receiving party's control unless required to do so by law or regulatory authority. If LUEL receives a request for information relating to the SERVICES it may have to disclose some information under the Freedom of Information Act 2000. LUEL may need to consult with the CLIENT before releasing the requested information, and on such occasions a timely response would be required.
- 7.3 The provisions of Clause 7 will survive for a period of three (3) years after the termination of the CONTRACT.
- 7.4 The obligations of confidentiality shall supersede in its entirety with effect from the date of the CONTRACT, any confidentiality agreement that the Parties may have previously entered into relating to the same subject matter as the CONTRACT.

8.0 WARRANTIES AND LIABILITIES

- 8.1 The CLIENT accepts that all information supplied by LUEL to the CLIENT in connection with the SERVICES is supplied on an "as is basis" and LUEL gives no warranty and makes no representation as to its fitness for any purpose and/ or that it will solve any problem put by the CLIENT.

- 8.2 For the avoidance of doubt LUEL is not registered under any British standard and/or accredited to any form of ISO accreditation and is also not able to give an endorsement to any product, process and service carried out on behalf of the CLIENT. However any SERVICES supplied to the CLIENT through LUEL that is accredited, the accreditation is specified under Special Terms in the CONTRACT.
- 8.3 LUEL will use reasonable endeavours to ensure that the SERVICES are supplied and the WORK SCHEDULE is performed in a timely and professional manner and to ensure the accuracy of any report or any other information supplied to the CLIENT but shall not be liable to the CLIENT for any delays; and shall not be liable for any inaccuracies or omissions unless such inaccuracies or omissions are the result of negligence on the part of LUEL and/or its employees and/or agents.
- 8.4 In any event LUEL's liability to the CLIENT under Clause 8.3 in respect of inaccuracies or omissions shall be limited to reworking or re-performance or correction of that part of the SERVICES in respect of which the CLIENT can show there are inaccuracies or omissions as a result of negligence on the part of LUEL and/or its employees and/or agents and in respect of which the CLIENT has made payment in full.
- 8.5 LUEL's employees and/or agents are not authorised to make any representations or give any warranties concerning the SERVICES or WORK SCHEDULE or any other matter concerning the CONTRACT and in entering into the CONTRACT the CLIENT agrees not to make any claim based on any representations or warranties that are not given or confirmed in writing by an authorised representative of LUEL.
- 8.6 Except in respect of death or personal injury as a result of the negligence neither Party or its employees and/or its agents shall be liable to the other Party (or any third party) for indirect and/or consequential loss and/or economic loss and/or damage and/or costs and/or expenses or any other claims arising out of any use or in connection with any use by the other Party (or any such third party) of any information supplied by a Party or its employees and/or its agents to the other Party (or to any third party) whether in contract, tort, negligence, breach of statutory duty or otherwise whatsoever arising out of or in connection with the CONTRACT .
- 8.7 In respect of any loss or damage which in any way arises out of or is connected with the performance or non-performance by or on behalf of LUEL under the CONTRACT, the CLIENT agrees that it shall take no action or proceedings against any of LUEL's employees and/or agents and shall look solely to LUEL in accordance with these CONDITIONS.
- 8.8 Except where the CLIENT is a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1997 as amended or replaced) the CLIENT in entering into the CONTRACT acknowledges and accepts that all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.9 The CLIENT will indemnify LUEL, its employees and/or agents and keep them indemnified against any and all costs, claims, demands and expenses incurred by LUEL as a result of any claim brought by a third party in respect of the performance of the SERVICES and/or the use of the results of the SERVICES due to the use of the background IP supplied by the CLIENT to LUEL to undertake the WORK.

8.10 Subject to Clause 8.6, any liability of LUEL for direct loss in contract, tort or otherwise arising out of or in connection with the CONTRACT is limited for one (1) incident or a series of incidents to the total amount of the payment actually received by LUEL from the CLIENT for the SERVICES provided under the CONTRACT.

9.0 FORCE MAJEURE

9.1 LUEL will not be liable to the CLIENT or be deemed to be in breach of the CONTRACT for failure to perform or by reason of any delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption or delay in transportation, unavailability of, interruption or delay in telecommunication or third party services, failure of third party software or hardware or inability to obtain raw materials, supplies or power used in or breakdown of equipment needed for the provision of the SERVICES

9.2 If LUEL is or has been or may reasonably expect to be delayed by events provided for under this Clause 9 it may notify the CLIENT and the CLIENT shall grant LUEL from time to time in writing either prospectively or retrospectively such extension of the time fixed by the CONTRACT for completion as may be reasonable.

9.3 In the event that LUEL is unable to perform its obligations in connection with the CONTRACT due to the unforeseen unavailability, incapacity or death of any individual or individuals (whether or not employees and/or agents of LUEL) allocated to performance of LUEL's obligations, the provisions of this Clause 9 shall apply. If LUEL fails to allocate an alternative individual or alternative individuals to the performance of such obligations for a period in excess of twenty eight (28) days, the CLIENT shall be entitled to terminate the CONTRACT with immediate effect by notice in writing to LUEL; payment shall be due for SERVICES supplied but not paid for and no compensation shall be due for LUEL's failure to perform its obligations in these circumstances.

10.0 INSOLVENCY OF CLIENT

10.1 This Clause applies if:

10.1.1 The CLIENT makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

10.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the CLIENT; or

10.1.3 The CLIENT ceases or threatens to cease to carry on business; or

10.1.4 LUEL has reasonable cause to believe that any event set out in this Clause is about to occur and notifies the CLIENT accordingly.

10.2 If this Clause applies then (without prejudice to any other right or remedy available to LUEL) LUEL

shall be entitled to terminate the CONTRACT with immediate effect by notice to the CLIENT; and if SERVICES have been supplied but not paid for payment in full shall become immediately due and payable.

11. GENERAL

- 11.1 Any notice required or permitted to be given by either Party to the other under the CONTRACT must be in writing to the CLIENT Contact or the LUEL Contact and addressed and delivered to that other Party at its registered office or principal place of business, or to a fax number or e-mail address provided by that Party for the service of notices, or to any other address notified in accordance with this clause. Notices may be sent by post, fax or e-mail, and will take effect: if sent by first class pre-paid post, on the third (3) working day after posting; if sent by airmail, on the seventh (7) working day after posting; and if sent by fax or e-mail, immediately provided the sender has a clear transmission report showing delivery to the correct fax number or e-mail address.
- 11.2 Each Party represents that they have not done, and shall not;
- 11.2.1 offer, give, agree to give, intend or attempt to give to any member of a Party, or any other persons or organisations, any gift or consideration, or any other form of benefit, tangible or otherwise as an inducement or reward (referred to herein as "Prohibited Acts") for doing or not doing any act in relation to this Agreement or any other agreement/contract with the other Party to this Agreement;
- 11.2.2 enter into this Agreement or any other agreement/contract with the other Party in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, unless the details of such commission and the terms of such agreement have been fully disclosed in writing to that Party prior to execution of this Agreement.
- If a Party, its staff or any subcontractors, or anyone acting on its behalf, does any of the Prohibited Acts or commits any offence under the Bribery Act 2010, whether with or without the knowledge of that Party, the other Party shall be entitled to terminate this Agreement, and any other agreement/contract with the other Party with immediate effect, and recover from such Party the amount of any losses resulting from such termination, and the amount or value of any such gift, consideration or commission where appropriate in the circumstances.
- 11.3 No waiver by LUEL of any breach or alleged breach of any provision of the CONTRACT including these CONDITIONS by the CLIENT shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of the CONTRACT including these CONDITIONS is held by any competent authority to be invalid or unenforceable in whole or in part the validity or enforceability of all other provisions of the CONTRACT including these CONDITIONS and the remainder of the provision in question shall not be affected.
- 11.5 The headings in these CONDITIONS are for convenience of reference only and shall not affect their interpretation.
- 11.6 The CONTRACT including these CONDITIONS represents the entire agreement between LUEL and the

CLIENT in connection with the SERVICES and supersedes and replaces all previous understandings or representations whether written or oral or express or implied in connection with the subject matter or under which any estimate or quotation is accepted or purported to be accepted or any order is made or purported to be made.

- 11.7 Any third party identified by name or by description in the CONTRACT including these CONDITIONS is entitled to enforce any term of the CONTRACT including these CONDITIONS which confers a benefit on that third party but shall not be entitled to prevent variation or rescission by the parties of the CONTRACT including these CONDITIONS.
- 11.8 The CONTRACT including these CONDITIONS shall be governed and construed according to the Laws of England and be subject to the exclusive jurisdiction of the English Courts.

Critical Infrastructure Risk: A Quantitative and Qualitative Review of NHS Trust Practices

Table 1: Planned Activities and Resources for Stage 1

Stage 1: Data collection and initial desk-top analysis			
<p>The results of this collection will be cross referenced with other data including:</p> <ul style="list-style-type: none"> • CIR/Area metric; • Planned Backlog for (2017-18)/CIR; • Trust income; • PFI, PropCo and leased sites (as the NHS is not responsible for Backlog/CIR on these); • Historical and planned capital expenditure patterns; • Future planned changes to the estate e.g. STP's, and • Capacity to support capital investment. <p>The above analysis will be used to give a national Backlog and CIR situation and identify outliers:</p> <ul style="list-style-type: none"> • Low levels of historic capital investment compared to the size of their estate; • High levels of Backlog and/or CIR when they have invested heavily in their estate, or; • High levels of Backlog or CIR compared to their peer groups. • The outliers identified in Stage 1 will be investigated to ensure that they are actually outliers and their position as such is due to their underlying situation and not a result of poor quality data. On completion of the verification, trusts will be identified for further engagement. 			
Activity	Staff Resource /		Other
	Senior (days)	Associate (days)	
Quantitative review of ERIC data to determine current levels of Critical Infrastructure Risk (i.e. total of High and Significant Backlog Maintenance) among NHS Trusts (i.e. excluding PFI).	■	■	
Explore relationships (i.e. trends) between current CIR and: previous CIR levels; asset age and spend on backlog maintenance. Explore high CIR sites and significant CIR changes.	■	■	
Develop a data collection strategy to be used in Stage 2 and Stage 3.	■		
Progress draft final report.	■	■	■ ■
Total	■	■	■

Table 2: Planned Activities and Resources for Stage 2

Stage 2: Verification of data including assessment of Trusts' situations

Questionnaire A to Sites with High CIR will break CIR by type and mainly comprise:

- description of the type of CIR that needs to be eliminated including timeframe, causes and impact of non-investment to safety and/or resilience of services;
- associated costs including annual revenue impact of existing CIR, cost of maintaining the infrastructure and its associated services that would not be spent if the CIR was eliminated; and
- good practice and planned strategies/methods for reducing CIR, reasons behind the choice and timeframe.

Questionnaire B to the remaining sites will be a reduced version.

Activity	Staff Resource		Other
	Senior (days)	Associate (days)	
Develop and issue Questionnaire Survey A to all General Acute (220 sites) and 32 other sites which make up +50% of other categories' CIR.	■	■	■■■■ ■■■
Develop and issue Questionnaire Survey B (i.e. brief version) to remaining non-General Acute.	■■■	■	
Collect, compile, clean and analyse Questionnaire Survey A.	■■■	■	
Collect, compile, clean and analyse Questionnaire Survey B (i.e. brief version).	■	■	
Progress draft final report.	■	■	■■■■ ■■■ ■■■
Total	■	■	■■■

Table 3: Planned Activities and Resources for Stage 3

Stage 3: Engagement with selected NHS Estates & Facilities colleagues and other interested parties.			
<ul style="list-style-type: none"> • The interviews by phone and sites visits will target Sites with the highest CIR and probe further the information gathered via ERIC and the questionnaire survey. • Practices used in other sectors will be explored. • A workshop with key players will be used to validate the main findings. 			
Activities.	Staff Resource		Other
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Interview by phone 12 Trusts/Sites to obtain a range of good practice where CIR has improved or remained low and examples where sites have high or rapidly increasing CIR.	■	■	■■■■ ■■■■
Qualitative analysis of interviews conducted by phone.	■	■	■■■■ ■■■■ ■■■■
A validation workshop with a mix (site type and different CIR strategies/level of) say 10-20 people. Analysis of feedback.	■	■	■■■■ ■■■■
Review of approaches to CIR by other sectors (for example defence, education, energy, transport and PFI) based on high level leads provided by NHS improvement.	■	■	
Draft final report.	■	■	
Final report and handover.	■	■	
Total	■	■	■■■■

Table 4: Total Planned Activities and Resources

Activities.	Staff Resource / Grade		Other	Total
	Senior (days)	Associate (days)		
Stage 1: Data collection and initial desk-top analysis.	██████████ ██████████	██████████ ██████████	████	██████████
Stage 2: Verification of data including assessment of Trusts' situations.	██████████ ██████████	██████████ ██████████	████	██████████
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Total	██████████ ██████████	██████████ ██████████	████	██████████ ██████████ ██████████

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6.0 PUBLICATIONS AND INFORMATION ARISING/IP

- 6.1 All IP in the SERVICES will be owned by the CLIENT.
- 6.2 Subject to Clause 6.5, the CLIENT grants to LUEL a non-transferable, perpetual, royalty-free licence for

LUEL, the LUEL Lead and any employee and/or agents of LUEL to use and publish the results in the SERVICES for non-commercial use such as teaching and research.

- 6.3 Despite the terms of Clause 6.1 the CLIENT must not misrepresent any views or conclusions reached by LUEL and expressed in any written report and/or other written information supplied as part of the SERVICES; and no such misrepresented views or conclusions, or any such written information may be used in any legal proceedings as evidence of the facts or opinions stated by LUEL.
- 6.4 The CLIENT will not use Loughborough University and/or LUEL's logo or name in connection with any publicity or publication arising from the SERVICE without LUEL written permission.
- 6.5 LUEL, LUEL Lead or any employee and/or agent may not publish the results in the SERVICES without the CLIENT's prior written consent.

7.0 CONFIDENTIALITY

- 7.1 During the CONTRACT, LUEL and the CLIENT may exchange information which is of a secret or confidential nature ("INFORMATION"). To avoid any doubt, to be secret or confidential, such INFORMATION shall not (i) already be known to the recipient or; (ii) have entered into the public domain either (a) at the time of disclosure to the recipient or (b) subsequently through no fault of the recipient.
- 7.2 The recipient shall use reasonable endeavours to keep such INFORMATION confidential and to that end shall not, without specific prior written consent of the other party permit that information:
- 7.2.1 to be disclosed except to those who may need to have such INFORMATION in connection with the SERVICES;
- 7.2.2 to pass outside the receiving party's control unless required to do so by law or regulatory authority. If LUEL receives a request for information relating to the SERVICES it may have to disclose some information under the Freedom of Information Act 2000. LUEL may need to consult with the CLIENT before releasing the requested information, and on such occasions a timely response would be required.
- 7.3 The provisions of Clause 7 will survive for a period of three (3) years after the termination of the CONTRACT.
- 7.4 The obligations of confidentiality shall supersede in its entirety with effect from the date of the CONTRACT, any confidentiality agreement that the Parties may have previously entered into relating to the same subject matter as the CONTRACT.

8.0 WARRANTIES AND LIABILITIES

- 8.1 The CLIENT accepts that all information supplied by LUEL to the CLIENT in connection with the SERVICES is supplied on an "as is basis" and LUEL gives no warranty and makes no representation as to its fitness for any purpose and/ or that it will solve any problem put by the CLIENT.

- 8.2 For the avoidance of doubt LUEL is not registered under any British standard and/or accredited to any form of ISO accreditation and is also not able to give an endorsement to any product, process and service carried out on behalf of the CLIENT. However any SERVICES supplied to the CLIENT through LUEL that is accredited, the accreditation is specified under Special Terms in the CONTRACT.
- 8.3 LUEL will use reasonable endeavours to ensure that the SERVICES are supplied and the WORK SCHEDULE is performed in a timely and professional manner and to ensure the accuracy of any report or any other information supplied to the CLIENT but shall not be liable to the CLIENT for any delays; and shall not be liable for any inaccuracies or omissions unless such inaccuracies or omissions are the result of negligence on the part of LUEL and/or its employees and/or agents.
- 8.4 In any event LUEL's liability to the CLIENT under Clause 8.3 in respect of inaccuracies or omissions shall be limited to reworking or re-performance or correction of that part of the SERVICES in respect of which the CLIENT can show there are inaccuracies or omissions as a result of negligence on the part of LUEL and/or its employees and/or agents and in respect of which the CLIENT has made payment in full.
- 8.5 LUEL's employees and/or agents are not authorised to make any representations or give any warranties concerning the SERVICES or WORK SCHEDULE or any other matter concerning the CONTRACT and in entering into the CONTRACT the CLIENT agrees not to make any claim based on any representations or warranties that are not given or confirmed in writing by an authorised representative of LUEL.
- 8.6 Except in respect of death or personal injury as a result of the negligence neither Party or its employees and/or its agents shall be liable to the other Party (or any third party) for indirect and/or consequential loss and/or economic loss and/or damage and/or costs and/or expenses or any other claims arising out of any use or in connection with any use by the other Party (or any such third party) of any information supplied by a Party or its employees and/or its agents to the other Party (or to any third party) whether in contract, tort, negligence, breach of statutory duty or otherwise whatsoever arising out of or in connection with the CONTRACT .
- 8.7 In respect of any loss or damage which in any way arises out of or is connected with the performance or non-performance by or on behalf of LUEL under the CONTRACT, the CLIENT agrees that it shall take no action or proceedings against any of LUEL's employees and/or agents and shall look solely to LUEL in accordance with these CONDITIONS.
- 8.8 Except where the CLIENT is a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1997 as amended or replaced) the CLIENT in entering into the CONTRACT acknowledges and accepts that all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.9 The CLIENT will indemnify LUEL, its employees and/or agents and keep them indemnified against any and all costs, claims, demands and expenses incurred by LUEL as a result of any claim brought by a third party in respect of the performance of the SERVICES and/or the use of the results of the SERVICES due to the use of the background IP supplied by the CLIENT to LUEL to undertake the WORK.

8.10 Subject to Clause 8.6, any liability of LUEL for direct loss in contract, tort or otherwise arising out of or in connection with the CONTRACT is limited for one (1) incident or a series of incidents to the total amount of the payment actually received by LUEL from the CLIENT for the SERVICES provided under the CONTRACT.

9.0 FORCE MAJEURE

9.1 LUEL will not be liable to the CLIENT or be deemed to be in breach of the CONTRACT for failure to perform or by reason of any delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption or delay in transportation, unavailability of, interruption or delay in telecommunication or third party services, failure of third party software or hardware or inability to obtain raw materials, supplies or power used in or breakdown of equipment needed for the provision of the SERVICES

9.2 If LUEL is or has been or may reasonably expect to be delayed by events provided for under this Clause 9 it may notify the CLIENT and the CLIENT shall grant LUEL from time to time in writing either prospectively or retrospectively such extension of the time fixed by the CONTRACT for completion as may be reasonable.

9.3 In the event that LUEL is unable to perform its obligations in connection with the CONTRACT due to the unforeseen unavailability, incapacity or death of any individual or individuals (whether or not employees and/or agents of LUEL) allocated to performance of LUEL's obligations, the provisions of this Clause 9 shall apply. If LUEL fails to allocate an alternative individual or alternative individuals to the performance of such obligations for a period in excess of twenty eight (28) days, the CLIENT shall be entitled to terminate the CONTRACT with immediate effect by notice in writing to LUEL; payment shall be due for SERVICES supplied but not paid for and no compensation shall be due for LUEL's failure to perform its obligations in these circumstances.

10.0 INSOLVENCY OF CLIENT

10.1 This Clause applies if:

10.1.1 The CLIENT makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

10.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the CLIENT; or

10.1.3 The CLIENT ceases or threatens to cease to carry on business; or

10.1.4 LUEL has reasonable cause to believe that any event set out in this Clause is about to occur and notifies the CLIENT accordingly.

10.2 If this Clause applies then (without prejudice to any other right or remedy available to LUEL) LUEL

shall be entitled to terminate the CONTRACT with immediate effect by notice to the CLIENT; and if SERVICES have been supplied but not paid for payment in full shall become immediately due and payable.

11. GENERAL

- 11.1 Any notice required or permitted to be given by either Party to the other under the CONTRACT must be in writing to the CLIENT Contact or the LUEL Contact and addressed and delivered to that other Party at its registered office or principal place of business, or to a fax number or e-mail address provided by that Party for the service of notices, or to any other address notified in accordance with this clause. Notices may be sent by post, fax or e-mail, and will take effect: if sent by first class pre-paid post, on the third (3) working day after posting; if sent by airmail, on the seventh (7) working day after posting; and if sent by fax or e-mail, immediately provided the sender has a clear transmission report showing delivery to the correct fax number or e-mail address.
- 11.2 Each Party represents that they have not done, and shall not;
- 11.2.1 offer, give, agree to give, intend or attempt to give to any member of a Party, or any other persons or organisations, any gift or consideration, or any other form of benefit, tangible or otherwise as an inducement or reward (referred to herein as "Prohibited Acts") for doing or not doing any act in relation to this Agreement or any other agreement/contract with the other Party to this Agreement;
- 11.2.2 enter into this Agreement or any other agreement/contract with the other Party in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, unless the details of such commission and the terms of such agreement have been fully disclosed in writing to that Party prior to execution of this Agreement.
- If a Party, its staff or any subcontractors, or anyone acting on its behalf, does any of the Prohibited Acts or commits any offence under the Bribery Act 2010, whether with or without the knowledge of that Party, the other Party shall be entitled to terminate this Agreement, and any other agreement/contract with the other Party with immediate effect, and recover from such Party the amount of any losses resulting from such termination, and the amount or value of any such gift, consideration or commission where appropriate in the circumstances.
- 11.3 No waiver by LUEL of any breach or alleged breach of any provision of the CONTRACT including these CONDITIONS by the CLIENT shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of the CONTRACT including these CONDITIONS is held by any competent authority to be invalid or unenforceable in whole or in part the validity or enforceability of all other provisions of the CONTRACT including these CONDITIONS and the remainder of the provision in question shall not be affected.
- 11.5 The headings in these CONDITIONS are for convenience of reference only and shall not affect their interpretation.
- 11.6 The CONTRACT including these CONDITIONS represents the entire agreement between LUEL and the

CLIENT in connection with the SERVICES and supersedes and replaces all previous understandings or representations whether written or oral or express or implied in connection with the subject matter or under which any estimate or quotation is accepted or purported to be accepted or any order is made or purported to be made.

- 11.7 Any third party identified by name or by description in the CONTRACT including these CONDITIONS is entitled to enforce any term of the CONTRACT including these CONDITIONS which confers a benefit on that third party but shall not be entitled to prevent variation or rescission by the parties of the CONTRACT including these CONDITIONS.
- 11.8 The CONTRACT including these CONDITIONS shall be governed and construed according to the Laws of England and be subject to the exclusive jurisdiction of the English Courts.