

Part 2: Availability**1 Interpretation**

1.1 In this Part of the Schedule:

1.1.1 references to a Part are references to this Part unless otherwise indicated

1.1.2 references to a Paragraph are to paragraphs of this Part unless otherwise indicated.

2 Determination of Availability

2.1 Subject to the following provisions of this Part a Component Unit shall be available (**Available**) unless it is, subject to paragraph 2.6 hereof, for any part of a day not available for use as a consequence of the non provision or poor quality provision of that Component Unit or services to that Component Unit, such that the Component Unit cannot reasonably be said to be provided for its intended purpose.

2.2 In the first instance, the Trust acting reasonably shall determine whether a Component Unit is Available or not Available in accordance with Paragraph 2.1 and Paragraph 2.3. If the SPC disagrees with the determination of the Trust it may refer the matter to the Dispute Resolution Procedure on the question of the reasonableness of the Trust's determination (but for the avoidance of doubt not any other aspect).

2.3 **Not Used**

2.4 A Component Unit shall be deemed Available, even if it would otherwise not be Available, for one of the following reasons:

2.4.1 the Component Unit is being maintained, refurbished or replaced in accordance with the Planned Maintenance Program

2.4.2 the Component Unit is being maintained, refurbished or replaced in accordance with the Intermediate Maintenance Program

2.4.3 the Component Unit is not Available as a consequence of an act or omission (negligent, wilful or otherwise) of the Trust or Trust Staff and that act or omission is not an Insured Risk

2.4.4 the Component Unit is not Available as a consequence of an act of any Patient or Visitor and (a) a reasonable period for the remedy of the problem has not yet elapsed or (b) the damage is of a minor nature which does not impair the functionality of the Component Unit or is rectified in a reasonable period or (c) such act would not have occurred if the Trust Staff had exercised reasonable diligence.

2.5 If a Component Unit is not Available as a consequence of an act or omission (negligent, wilful or otherwise) of the Trust, Trust Staff or Patients or Visitors and that act or omission is an Insured Risk then an appropriate deduction for lack of Availability shall only be made to the extent that the SPC actually recovers payment in respect thereof from insurers (or would do so but for any breach of its insurance obligations hereunder), and the Trust shall reimburse the SPC (i) the amount of any deductible on the relevant insurance which the Insurer is entitled to deduct from any insurance proceeds paid to the



SPC as a consequence of the occurrence of the event (ii) the amount of any increase in premium for the relevant insurance associated with the occurrence of the event.

- 2.6 If after any first day of Non Availability a Component Unit is in use or continues to be in use by the Trust for any part of a day then that Component Unit shall be deemed Available.
- 2.7 During a period while a Component Unit remains decommissioned pursuant to Clause 50 then that Component Unit shall not be considered part of the Hospital for the purpose of calculating the Availability Deduction.
- 2.8 Notwithstanding Paragraph 2.1, if a Component Unit is not required by the Trust throughout a day (which shall be determined by the Trust acting reasonably), then that Component Unit shall be deemed Available. Notwithstanding the foregoing, in circumstances where another Component Unit is not being used which is of the same type as one which is not Available, the latter shall be deemed to be Available, unless the Trust acting reasonably determines that such other Component Unit could not be used by the Trust for the same purpose as the Component Unit which is not Available.
- 2.9 The Trust covenants to work with the SPC to ensure that the impact of any initial or potential non Availability is avoided or minimised, provided always that the Trust shall not be under any obligation to take any action beyond that which is reasonable and may require the SPC to reimburse it its reasonable external costs of agreed action taken.
- 2.10 Where any Component Unit is not Available as a result of an SPC Infection Risk, the SPC shall be responsible for such outbreak of infection and as such the relevant Component Unit shall be deemed to be not Available and as such Availability Deductions shall be made.
- 2.11 Where any Component Unit is not Available as a result of a Trust Infection Risk, the Trust shall be deemed to be prima facie responsible, (unless it can demonstrate that such non-Availability was an SPC Infection Risk) and in such case the relevant Component Unit shall be deemed to be Available.

3 Escalation of Availability Deductions

- 3.1 Periods of non-Availability shall be categorised into Bands A, B, C, D and E.
- 3.3 If a Component Unit is not Available then any Band A Days, Band B Days, Band C Days and Band D Days arising shall attract rates of deduction of 15 per cent, 25 per cent, 50 per cent and 75 per cent respectively as ascertained in accordance with Part 1A.
- 3.4 No payment will be made for any Band E Days.

4 Alternative Accommodation

- 4.1 If a Component Unit is not Available the SPC may propose ("Proposal") appropriate temporary alternative arrangements ("Temporary Alternative Arrangements") which may involve the use of another part of the Hospital or otherwise, including a facility outside the Hospital Site.
- 4.2 The Trust shall determine whether the Temporary Alternative Arrangements contained in the Proposal are appropriate or not and shall accept or reject the Proposal but may not reject the Proposal unreasonably.



- 4.3 If the Temporary Alternative Arrangements require the use of another Component Unit of the Hospital then, for the purpose of calculating the Availability Deduction, that other Component Unit and the Component Unit which it is replacing via the Temporary Alternative Arrangements shall be deemed Available for the time during which the Temporary Alternative Arrangements are in place.
- 4.4 The implementation of Temporary Alternative Arrangements shall be the responsibility of the SPC and the SPC shall be responsible for all costs it incurs in the implementation of any Temporary Alternative Arrangements.
- 4.5 The SPC shall not implement Temporary Alternative Arrangements unless and until a Proposal is accepted in writing by the Trust.
- 4.6 If the Trust incurs any reasonable costs as a consequence of the implementation of Temporary Alternative Arrangements which it would not have incurred had the Component or Component Unit the subject of the Temporary Alternative Arrangements been Available then the SPC shall reimburse those costs.
- 4.7 If the SPC considers that the Trust has unreasonably rejected a Proposal then it may refer the matter to the Dispute Resolution Procedure.

5 Procedure for Identifying non-Availability

- 5.1 The SPC shall be responsible for preparing and producing Availability Reports.
- 5.2 The SPC Contract Manager shall submit a draft Availability Report within 7 days of the end of each Monthly Reporting Period to the Trust Representative.
- 5.3 If the Trust agrees the contents of the draft Availability Report then it shall be deemed to be the Availability Report for that Month.
- 5.4 If the Trust disagrees with the contents of the draft Availability Report then it shall promptly and in any event within 7 days notify the SPC of the items which it considers are not correctly stated in or have been omitted from the report and giving details of the changes it considers to be appropriate.
- 5.5 If the SPC accepts the changes proposed by the Trust under Paragraph 5.4 then it shall issue a revised Availability Report within 7 days which shall be deemed to be the Availability Report for that Monthly Reporting Period.
- 5.6 If the SPC does not accept the changes proposed by the Trust under Paragraph 5.4 then the parties shall consult in good faith in an attempt to agree the Availability Report for the relevant month for the Monthly Reporting Period and if the parties do not then agree the Availability Report, the SPC may within 28 days of notification from the Trust under Paragraph 5.4 refer the matter to the Dispute Resolution Procedure.
- 5.7 Upon the issue of a final decision under the Dispute Resolution Procedure the SPC shall issue a corrected Availability Report which shall be the Availability Report for the Monthly Reporting Period to which it relates.

6 Availability Deductions

All areas of the Hospital, excluding accommodation solely used by the SPC, have been divided into Component Units as identified in Table 1 of this Part 2 below for the purposes of calculating Availability Deductions.



7 Availability Deduction Value

Availability Deductions are calculated by reference to the floor area of Component Units, the weighting of the Component Units and the value of the Unitary Charge. On any day the total of all possible Availability Deductions of all Component Units shall equal the total Unitary Charge payable in respect of such day. Areas which are not Component Units carry no possible Availability Deductions.

8 Calculation

8.1 Availability Deductions are calculated in respect of each Component Unit by multiplying the area (in square metres) of the Component Unit by the weighting of the Component Unit and by the charge per square metre.

$$\text{area} \times \text{weight} \times \text{charge} = \text{Availability Deduction}$$

8.2 The weighting of each Component Unit is graded (by reference to its impact on patient care throughout the Hospital) as follows:

Critical	:	3
High	:	2
Medium	:	1.5
Low	:	1

8.3 The charge per square metre is calculated in respect of Component Units in the New Build Hospital by the following formula:

$$x + \frac{A}{A + B} \times C \div A$$

and in respect of Component Units in the Existing Buildings by the following formula:

$$\frac{B}{A + B} \times C \div B$$

In this Paragraph 8.3

A = The area in square metres of the New Build Hospital

B = The area in square metres of the Existing Buildings

C = The sum of the elements shown in Table 1 of Part 1A applying at the time of calculation for Total Service Price, Risk Overhead and Margin and Major Maintenance Charge

x = The Capital Rental element shown in Table 1 of Part 1A applying at the time of calculation

9 Availability Deduction Value Table

9.1 Available Deduction values are set out below in Table 1 of this Part 2 for each Component Unit with the figures operating off a base date of 1 April 1997. Table 1 of this Part 2 will be revised each year in accordance with the provisions of Part 1A.



- 9.2 The Component Units have been determined on the basis of the Design Documentation as at 5 February 1998. To the extent that the areas of the Component Units of the Hospital at the Hospital Operations Date are different to the areas stated in Appendix 2, Appendix 2 will be adjusted accordingly.
- 9.3 To the extent that there is at any time a Change, Table 1 of this Part 2 will be changed as appropriate as part of the Change Control Procedure.

Table 1

Availability Model

