

## SCHEDULE 14

### Performance Mechanism

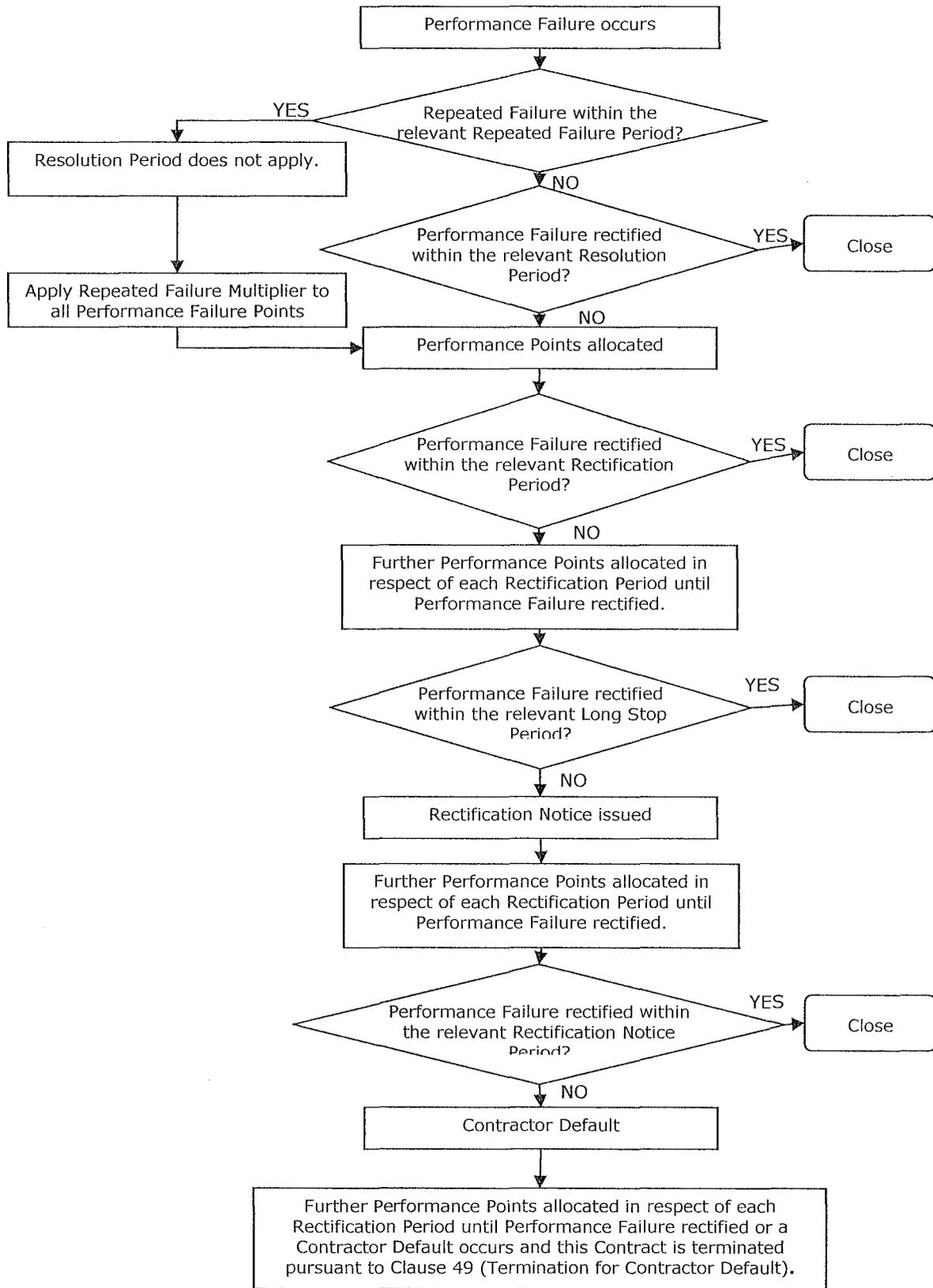
#### 1. INTRODUCTION

- 1.1 It is a fundamental principle that, if no Services are provided by the Contractor, then no payment will be made by the Councils to the Contractor. In order to achieve this principle, financial deductions may be made by the Councils following events where the Facilities operated by the Contractor are not Available or where the Contractor's performance in delivering the Services is not in accordance with the Performance Criteria set out in the Specification.
- 1.2 The framework for dealing with the Availability of Services is set out in the **Schedule 3** (Payment Mechanism). This Schedule sets out the framework for monitoring performance of the Services and for determining performance points and any resulting adjustment to payment.
- 1.3 At the higher level the primary concern is whether the Contractor's performance of the Services meets or exceeds the Contract Targets. Performance against the Contract Targets may result in adjustments which shall be applied in accordance with **Schedule 3** (Payment Mechanism). Prolonged failures to achieve Contract Targets will trigger a Contractor Default which entitles the Councils to terminate this Contract under **clause 57** (Termination on Contractor Default).
- 1.4 Indirect deductions via a Performance Points system address performance against Key Performance Indicators (KPIs). These relate to more local and specific service activities that ensure standards of services are enhanced year-on-year or at least maintained in accordance with details set out in **Schedule 1** (Specification) and the Contractor's Proposals.
- 1.5 The Contractor's performance against the Performance Criteria (detailed in the Specification) will be measured by reference to the KPI's.
- 1.6 The regime set out in this Schedule (the Performance Regime) will apply in full for the duration of the Contract Period.

#### 2. KEY PERFORMANCE INDICATORS

- 2.1 The KPIs are set out in Table 1 below.
- 2.2 The list of KPIs shall be reviewed annually by the Contractor and the Councils and any additional or revised KPIs and monitoring methods shall be agreed by the Parties prior to 31st March each year. The first review shall be carried out so as to enable any additional or revised KPIs to be implemented as from 31st March 2011. Changes to KPIs shall be kept to a minimum to ensure continuity of data collection and to establish performance trends.

**FIGURE 1 – PERFORMANCE FLOW CHART FOR PERFORMANCE FAILURE EVENT**



**Table 1**

KPI No	Contract Reference	Performance Failure	Measurement	Reporting Frequency	Resolution Period	Rectification Period	Performance Points per Failure or Resolution Period or Rectification Period	Long Stop Period	Initial Repeat Failure Period
Monthly KPIs									
1.	Specification Para 3.2	<b>Services Delivery Plan</b> Failure to update the Services Delivery Plan (SDP) (including all other subsidiary plans and documents).	Business Days	Monthly	5 Business Days	10 Business Days	3000	2 months	3 Years
2.	Specification Para 3.15	<b>Contingency Plan</b> Failure to maintain and comply with the Contingency Plan	No of occurrences	Monthly	N/A	N/A	600	N/A	1 Year
3.	Specification paras 3.14	<b>Health and Safety Plan</b> Failure to operate the Services in accordance with the Health and Safety Plan	No of occurrences	Monthly	N/A	N/A	1000	N/A	1 Year
4.	Schedule 4 (Reporting)	<b>Monthly Reporting</b> Failure to provide the monthly waste data report and operational report to the Councils by the specified date in accordance with Schedule 4 (Reporting)	Business Days	Monthly	0	5 Business Days	500	2 months	1 Year
5.	Schedule 4 (Reporting)	<b>Monthly report errors</b> Failure to verify and correct errors identified in Monthly Reports within 10 Business Days in accordance with Schedule 4 (Reporting)	Business Days	Monthly	0	5 Business Days	250	3 months	1 Year
6.	Specification para 3.8	<b>Customer Enquiries</b> Failure to respond to enquiries, service requests	No of occurrences	Monthly	N/A	N/A	150	N/A	1 Year

		and complaints from members of the public or the Councils, within the response times specified in the Councils' customer care policies as at the date of this Contract (save to the extent that such failure on the part of the Contractor arises as a direct result from a delay by the Councils).							
7.	Specification para 5.6	<b>Education and Seminar Facilities</b> Failure to provide and make available educational and seminar facilities for visits and tours	No of occurrences	Monthly	N/A	N/A	400	N/A	1 Year
8.	Specification paras 3.11	<b>Environmental Management</b> Failure to obtain and maintain an accredited or equivalent Environmental Management System.	Business Days	Monthly	5 Business Days	28 Business Days	600	6 months	5 Years
9.	Specification paras 3.12.1	<b>Quality Assurance</b> Failure to obtain and maintain an accredited or equivalent quality management system.	Business Days	Monthly	5 Business Days	28 Business Days	600	6 months	5 Years
10.	Specification para 3.14.19	<b>Health and Safety Training Records</b> Failure to maintain health & safety training records for each member of staff.	No of occurrences	Monthly	5 Business Days	10 Business Days	50	1 Year	1 Year
11.	Specification paras 3.14.20 to 3.14.25	<b>RIDDOR</b> Failure to inform the Councils of any RIDDOR reportable accident or an accident involving a member of the public in accordance with the Specification.	No of occurrences	Monthly	N/A	N/A	150	N/A	1 Year
12.	Specification paras 4.7, SDP	<b>Weighbridge Provision</b> Failure to provide and maintain an operational weighbridge controlled entrance at each Delivery Point as set out in the Specification and Services	Business Days	Monthly	1 Business Day	3 Business Days	1100	3 months	1 Year

		Delivery Plan.							
13.	Specification paras 4.7.1, 4.7.4, 4.7.6, SDP	<b>Weighing and Monitoring</b> Failure to comply with the procedures set out in the Specification and Services Delivery Plan for the weighing, recording and reporting of Contract Waste and Third Party Waste	No of occurrences	Monthly	N/A	N/A	30	N/A	1 Year
14.	Specification paras 6.18	<b>HWRC Waste litter and spillages</b> Failure to take appropriate measures to prevent Waste escaping from a HWRC or to promptly control and contain any liquid spillages of Waste.	No of occurrences	Monthly	N/A	N/A	50	N/A	1 Year
15.	Specification para 6.19	<b>Flytipping</b> Failure to remove flytipped Waste in accordance with the Specification.	Operating Hours	Monthly	4 Operating Hours	4 Operating Hours	250	3 months	1 Year
16.	Specification paras 6.17, 6.7.3.7	<b>HWRC Traffic Continuity</b> Failure to comply with the SDP regarding management of traffic continuity at each HWRC in accordance with the Specification and the Services Delivery Plan	No of occurrences	Monthly	N/A	N/A	250	N/A	1 Year
17.	Specification para 6.7.14, 6.7.3.6, 6.7.4.2	<b>Authorised Vehicles</b> Failure to use reasonable endeavours in accordance with operating procedures to prevent vehicles other than those authorised by the Councils to deliver Waste under this Contract in accordance with the existing permit scheme for the residents of Derby City.	No of occurrences	Monthly	N/A	N/A	50	N/A	1 Year
18.	Specification paras 4.8.3, 4.8.4	<b>Daily Average Vehicle Turnaround Time</b> Failure to achieve the specified daily average Turnaround time at a Delivery Point as set out in the Specification	No of occurrences	Monthly	N/A	N/A	575	N/A	1 Year

19.	Specification para 4.8.5	<b>Maximum Vehicle Turnaround Time</b> Failure to achieve the specified maximum turnaround time at each Delivery Point as set out in the Specification	No of delayed vehicles	Monthly	N/A	N/A	10	N/A	1 Year
ANNUAL KPIs									
20.	Schedule (Reporting) 4	<b>Annual Reporting</b> Failure to provide Annual Reports to the Councils by the specified date in accordance with Schedule 4 (Reporting)	Business Days	Annually	0	7 Business Days	1400	2 months	3 Years
21.	Schedule (Reporting) 4	<b>Annual report errors</b> Failure to verify and correct errors identified in Annual Reports within 10 Business Days in accordance with Schedule 4 (Reporting)	Business Days	Annually	0	5 Business Days	500	3 months	3 Years
22.	Specification para 3.3.1	<b>Greenhouse Gas Emissions</b> Failure to achieve annual Greenhouse Gas Emission targets as defined in the Specification, excluding the Works	Number of tonnes of carbon dioxide equivalent, or part thereof, by which the Contractor failed to meet the annual Greenhouse Gas Emission Target	Annually	N/A	N/A	25 points per tonne of carbon dioxide equivalent or part thereof	N/A	6 Years
23.	Specification paras 1.4.3	<b>Contract Waste Analyses</b> Failure to conduct Contract Waste sampling and composition analyses and or make information available to the Councils in accordance with the Specification	Business Days	Every five years	5 Business Days	15 Business Days	250	2 months	3 Years
24.	Specification para 5.1.5	<b>NWTF Re-use, Recycling and Composting</b> Failure to meet the minimum NWTF Re-use, Recycling and Composting Target in accordance with the	Percentage points below the NWTF Recycling and Composting Target	Annually	N/A	N/A	200 points per 0.1% or part thereof by which the target is	N/A	5 Years

		Specification					missed		
25.	Specification para 6.2.2	<b>HWRC Re-use, Recycling and Composting Target</b> Failure to achieve the minimum HWRC Re-Use, Recycling and Composting Target at any individual HWRC in accordance with the Specification	Percentage points below the HWRC Re-Use, Recycling and Composting Target	Annually	N/A	N/A	200 points per 0.1% or part thereof by which the target is missed	N/A	10 Years
26.	Specification para 8.2 to 8.5	<b>Waste Minimisation and Education Plan</b> The Contractor shall develop a Waste Minimisation and Education Plan annually by 31st March in consultation with the Councils.	Per Business Day delay the complete Waste Minimisation and Education Plan is not submitted	Annually	5 Business Days	5 Business Days	100	2 months	5 Years

### 3. **MONITORING RESPONSIBILITIES**

- 3.1 The Contractor shall be responsible for the continuous monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or default under, the requirements of the Performance Criteria for those KPIs identified in Table 1.
- 3.2 The Contractor shall notify the Councils, in accordance with paragraph 6 (Performance Monitoring Reports) of **Schedule 4** (Reporting), of any Performance Failures under any of the KPIs. If such a Performance Failure has occurred, the Performance Points and Performance Deductions shall be itemised in monthly reporting to the Councils.
- 3.3 Where necessary the Councils, acting in accordance with **clause** 39.3 (Council Monitoring) of this Contract shall undertake their own assessment and additional monitoring in seeking to verify the accuracy of submissions made to it by the Contractor. Any error in the Contractor's monitoring identified in the Monthly Report or Annual Reports by the Councils through the procedure set out in **clause** 32 (Report and Invoicing) shall constitute a Reporting Failure.
- 3.4 The Reporting Frequency is the minimum frequency with which the Contractor or Councils, as appropriate, shall report on the performance of the relevant KPI. The monitoring frequency shall be confirmed by the Contractor within the Services Delivery Plan for each KPI.

### 4. **PERFORMANCE MONITORING PROGRAMME**

- 4.1 The Contractor's Services Delivery Plan shall include a programme which shall:
- 4.1.1 describe in detail the actions that the Contractor shall take or procure to be taken regularly and systematically to monitor the provision of the Services to determine whether they are provided in accordance with the Contract;
  - 4.1.2 require the Contractor to monitor each KPI at least as frequently as required in the Specification and this **Schedule** 14 (Performance Mechanism);
  - 4.1.3 record all Performance Failures defined as a failure to achieve a KPI;
  - 4.1.4 be fully auditable back to the Performance Failures;
  - 4.1.5 record all other areas where the Contractor has not delivered the Services in accordance with the requirements of the Contract;
  - 4.1.6 record all areas where the delivery of Services has varied from the Services Delivery Plan.
  - 4.1.7 have a flexible reporting capacity which shall include without limitation reports by month and by Contract Year, aggregated across the whole Contract and for each Facility;
- (the "**Performance Monitoring Programme**").
- 4.2 The Performance Monitoring Programme shall be updated by the Contractor on an annual basis, concurrent with the annual review of the SDP, and subject to the same review and approval process as the SDP.

## 5. PERFORMANCE MONITORING REPORTS

- 5.1 Performance Monitoring Reports shall be prepared by the Contractor and submitted all in accordance with **Schedule 4** (Reporting).

## 6. REPORTING FAILURE

- 6.1 Where it is agreed pursuant to the review procedure of the monthly Payment Report which is set out in **clause 32** (Report and Invoicing) that the Payment Report should be amended due to a failure by the Contractor to comply with its obligations in this Contract, such failure shall constitute a Reporting Failure. In the event that a Reporting Failure has occurred in respect of a KPI which it is the Contractor's responsibility to monitor, or which has been notified to the Contractor by the Councils, then a Reporting Failure Deduction shall be made. The Contractor shall include all calculations for any Reporting Failure Deduction in the Performance Monitoring Report for the following Payment Period.

- 6.2 The Reporting Failure Deduction shall be the sum of the following:

6.2.1 the charge for both the Councils' time and any professional fees to investigate the Reporting Failure, acting reasonably regarding time spent which shall not exceed the amount of the amendment to the Payment Report;

6.2.2 The charge for additional time spent by the Councils monitoring the Contractor more closely at the prevailing rate until the Councils, acting reasonably, are satisfied that the Contractor is reporting correctly. For one or more Reporting Failures for each Payment Period, the Councils will have the right to carry out further auditing and monitoring for up to 40 hours per month for a period of 4 months after the Reporting Failure(s), or if sooner until the Councils, acting reasonably, are satisfied that such Reporting Failure(s) would not be repeated;

## 7. PROVISION OF RECORDS

- 7.1 The Contractor shall keep up to date records of performance monitoring for each KPI, in an accessible and readable format and shall permit access to them free of charge to the Councils on reasonable notice.

- 7.2 To the extent that the records of performance monitoring are created or maintained on a computer or electronic storage device, then the Contractor shall agree to proposals of the Councils (such agreement not to be unreasonably withheld or delayed) for a reasonable procedure for back-up and off-site storage for copies of such records of performance monitoring and shall adhere to such agreed procedure.

- 7.3 Pursuant to **clause 40** (Audit Access) or otherwise, the Councils have the right to observe, inspect and satisfy itself as to the adequacy and accuracy of the performance monitoring procedures carried out by the Contractor including:

7.3.1 reports generated by the Contractor's management information systems or building management systems;

7.3.2 work plans;

7.3.3 completion of programmed work;

7.3.4 enquiries, complaints, comments and compliments.

## 8. EXCEPTIONS

8.1 No Performance Points may be levied for any Performance Failure:

8.1.1 where rectification of a Performance Failure is effected within the specified Resolution Period;

8.1.2 for the first five Business Days of a Relief Event;

8.1.3 for KPIs relating to a Site which is subject to Unavailability Deductions;

8.1.4 where the services are being delivered in accordance with the Contingency Plan.

## 9. PERFORMANCE POINTS

9.1 Where a Performance Failure occurs in respect of a KPI where Table 1 does not provide for a Resolution Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor upon the occurrence of the Performance Failure.

9.2 Where a Performance Failure occurs in respect of KPI where Table 1 does provide for a Resolution Period, then:

9.2.1 if the Performance Failure is rectified within the Resolution Period, no Performance Points shall be allocated to the Contractor;

9.2.2 If the Performance Failure has not been rectified before the end of the Resolution Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor upon the expiry of the Resolution Period.

9.3 The Contractor shall not be entitled to a Resolution Period where Repeated Failures occur.

9.4 Notwithstanding **paragraph 11** (Repeated Failures) below, or any other provision of this Contract, in each of the first five (5) full Contract Years following the NWTF Completion Date in relation to a Performance Failure in respect of KPI 22:

9.4.1 the aggregate number of Performance Points awarded shall not exceed 225,000;

9.4.2 notwithstanding **paragraph 9.4.1**, Performance Points awarded in respect of KPI 22 shall not be taken into account for the purposes of limb (n) of the definition of Contractor Default to the extent they exceed:

9.4.2.1 20,000 per Month;

9.4.2.2 190,000 in any period of twelve (12) Months.

## 10. RECTIFICATION PERIODS

- 10.1 A Rectification Period shall commence upon the later of the expiry of the Resolution Period or the occurrence of the Performance Failure.
- 10.2 Where a Performance Failure occurs in respect of a KPI where Table 1 does not provide for a Rectification Period, the relevant number of Performance Points specified in Table 1 to this **Schedule** 14 (Performance Mechanism) shall be allocated to the Contractor either:
- 10.2.1 subject to **paragraph** 10.3, where, and only to the extent that, the Contractor fails to rectify the Performance Failure within the applicable Resolution Period, in which case the Performance Points shall be allocated to the contractor on expiry of the applicable Resolution Period; or
  - 10.2.2 where no Resolution Period is provided for, the Performance Points shall be allocated to the Contractor on the occurrence of the Performance Failure.
- 10.3 Where a Performance Failure occurs in respect of a KPI where Table 1 provides for a Rectification Period, the relevant number of Performance Points specified in Table 1 to this **Schedule** 14 (Performance Mechanism) shall be allocated to the Contractor:
- 10.3.1 upon the later of the expiry of any applicable Resolution Period or the occurrence of the Performance Failure; and
  - 10.3.2 if the Contractor fails to rectify the Performance Failure within the relevant Rectification Period, then a further set of relevant Performance Points as set out in Table 1 will be allocated to the Contractor taking account of any Repeated Failure Multiplier as described in **paragraph** 11 below.
- 10.4 At the end of each successive Rectification Period until the Performance Failure is Rectified, the Contractor shall be allocated further Performance Points at the level set out in Table 1 in each case multiplied by the applicable Repeated Failure Multiplier.

## 11. REPEATED FAILURES

- 11.1 The Repeated Failure Period means the Initial Repeated Failure Period (as defined in Table 1) which shall start from the day after the expiry of any applicable Resolution Period for the relevant KPI provided that:
- 11.1.1 if a Repeated Failure occurs during the Initial Repeated Failure Period, the Repeated Failure Period runs from the occurrence of such Repeated Failure until the expiry of a period equal to the relevant Initial Repeated Failure Period; and
  - 11.1.2 if a Repeated Failure occurs during any extended period described at **paragraph** 11.1.1, or during any period further extended in accordance with this **paragraph** 11.1.2, runs from the occurrence of such Performance Failure until the expiry of a time equal to the relevant Initial Repeated Failure Period.
- 11.2 The Repeated Failure Period may therefore continue indefinitely until no Repeated Failure occurs during a period equal to the Initial Repeated Failure

Period (such period running from the last occurrence of the relevant Performance Failure).

- 11.3 Where a Performance Failure is a Repeated Failure, the Performance Failure Points for that particular Performance Failure shall be multiplied by the applicable Repeated Failure Multiplier.

**Table 2: Repeated Failure Multipliers**

<b>Number of Failures relating to the same KPI within Repeated Failure Period</b>	<b>Repeated Failure Multiplier applied to last Performance Failure</b>
2-3	1.2
4-5	1.5
6-8	2
9 and onwards	2.5

12. **LONG STOP PERIOD**

- 12.1 Those KPIs that are allocated a Long Stop Period are listed in Table 1.
- 12.2 If the Contractor fails to rectify a Performance Failure within the Long Stop Period, then the Councils shall be entitled to issue a notice to the Contractor (a "**Rectification Notice**") instructing the Contractor to propose a remediation plan and rectify the Performance Failure as within a reasonable period (the Remediation Period), which shall be at least equal to the Long Stop Period unless otherwise agreed.
- 12.3 If, following receipt of the Rectification Notice, the Contractor fails to rectify the Performance Failure within the Remediation Period, then this shall be deemed a Contractor Default.
- 12.4 The Long Stop Period shall commence upon the later of the occurrence of the Performance Failure or the end of the relevant Resolution Period.

13. **CALCULATION OF TOTAL PERFORMANCE POINTS**

- 13.1 For each Payment Period t, the Monthly Performance Points shall be calculated by reference to the number of Performance Points the Contractor accumulated in relation to Monthly KPIs during month t (after application of the Repeated Failure Multiplier where relevant).
- 13.2 At the end of each Contract Year, the Annual Performance Points shall be calculated by reference to the number of Performance Points the Contractor accumulated in relation to the Annual KPIs (after application of the Repeated Failure Multiplier where relevant).