

SCHEDULE 12

Commercially Sensitive and Confidential Information

The information listed in **Parts 1** and **2** of this **Schedule 12** (Commercially Sensitive and Confidential Information) is information that both parties acknowledge is Commercially Sensitive Information for the purposes of this Contract.

The column on the left describes the Information and the column on the right sets out the length of time for which the Information should be considered Commercially Sensitive Information.

PART 1 - COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
Definition of Contractor Default and the figures contained in limbs (n), (p), (q), (r) and (s)	Until the earlier of the Termination Date and the Expiry Date
Clause 25.4.1 (Minimum Waste Delivery Obligations)	Until the earlier of the Termination Date and the Expiry Date
Clause 25.9 (Guaranteed Additional Diversion and Extra Diversion)	Until the earlier of the Termination Date and the Expiry Date
Clause 33.3B and 33.3C (Capital Contribution)	Until the earlier of the Termination Date and the Expiry Date
Clause 41 (Insurance) - amounts referred to in pounds sterling (£) in any or all of: (i) clause 41.7.1.1 ; (ii) clause 41.14.1 ; (iii) clause 41.15.2 ; or (iv) clause 41.15.3 .	Until the earlier of the Termination Date and the Expiry Date
The event of default level referred to in clause 41.16.2 and clause 41.16.3	Until the earlier of the Termination Date and the Expiry Date
Clause 57.1B (Councils' Right to Require Termination of the HWRC Contractor's Engagement in the Project)	Until the earlier of the Termination Date and the Expiry Date
The limits on the Contractor's liability in Clause 69.1.2.3	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.8.10 of Schedule 1 (Specification). The figure for the Maximum Contract Waste Delivery Capacity	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
(tonnes/day) for Derby Transfer Station only.	
Paragraph 5.1.1 (NWTF Diversion Tonnage Target) of Schedule 1 (Specification). The percentage figures and tonnage figures in paragraphs 5.1.1.2 to 5.1.1.5 only.	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.1.5 (NWTF Re-Use, Recycling and Composting Target) of Schedule 1 (Specification). The percentage figures and tonnage figures only.	Until the earlier of the Termination Date and the Expiry Date
Paragraph 6.2 (HWRC Re-Use, Recycling and Composting Target) of Schedule 1 (Specification). The percentage figures and tonnage figures only.	Until the earlier of the Termination Date and the Expiry Date
All formulas in Schedule 3 (Payment Mechanism) but excluding the definitions of the terms used in the formulas	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.2 (New Waste Treatment Facility) of Schedule 3 (Payment Mechanism) all references to amounts in tonnes and to the amount in pounds sterling contained in the definition of NWTFR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3 (HWRC and Contract Transfer Stations) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3.1 (HWRC Fixed Payment) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3.2 (Contract Transfer Station Fixed Payment) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
All references to the amount (in tonnes) of the GAD in paragraph 1.4 (Landfill) of Schedule 3 (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.4.2 (HWRC Enhanced Recycling Tonnage Target) in Schedule 3 (Payment Mechanism) – all percentage figures	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
Paragraph 1.4.3 (Tonnage Rate for Landfill) of Schedule 3 (Payment Mechanism) all the amounts in pounds sterling contained in the definition of LFGF at (a)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.4.4 (Landfill Diversion Saving) of Schedule 3 (Payment Mechanism) all the amounts in pounds sterling and tonnages	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.7 (Strategic Partnering Services) of Schedule 3 (Payment Mechanism) the amount in pounds sterling contained in the definition of IFy	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.8 (Electricity Revenues) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 2.3 (HWRCs and Contract Transfer Stations) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
References to LDSFy in paragraph 2.4 (Landfill) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 2.7 (Hazardous Waste and Clinical Waste (HCWE)) of Schedule 3 (Payment Mechanism) the amount in pounds sterling contained in the definition of HCWPFy at (a)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.1A (Monthly Adjustments in Excess of the Monthly Payment) of Schedule 3 (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Table 4.2.1 (HWRC Unavailability Rates) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Table 4.2.2 (Transfer Station Unavailability Rates) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.3 (Monthly Performance Adjustments) of Schedule 3 (Payment Mechanism) the amount in pounds sterling	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
contained in the definition of PPR	
Paragraph 4.4 (Tipping Away Payments) of Schedule 3 (Payment Mechanism) the amount in pounds sterling contained in the definition of TAPR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.2 (Annual Performance Deductions) of Schedule 3 (Payment Mechanism) the amount in pounds sterling contained in the definition of PPR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.3 (Landfill Adjustment) of Schedule 3 (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 6.5 (Electricity Indexation) of Schedule 3 (Payment Mechanism) the amount in pounds sterling contained in the definition of IXElec ₀	Until the earlier of the Termination Date and the Expiry Date
Schedule 6 (Change in Law - Contractor's Share)	Until the earlier of the Termination Date and the Expiry Date
Schedule 8 (Environmental Provisions) - paragraph 1.5.3	Until the earlier of the Termination Date and the Expiry Date
Part 2 (Proposed Workforce, Remuneration Costs and Reorganisation Costs of Schedule 10 (Employee Information)	Until the earlier of the Termination Date and the Expiry Date
Schedule 11 (Insurance), Part 6 (Insurance Premium Risk Sharing Mechanism), paragraph 1 , definition of Base Cost - references to amounts in pounds sterling (£)	Until the earlier of the Termination Date and the Expiry Date
Schedule 12 (Commercially Sensitive and Confidential Information)	Until the earlier of the Termination Date and the Expiry Date
Schedule 14 (Performance Mechanism): (i) Table 1; (ii) paragraph 6.2 ; and (iii) Table 2 (Repeated Failure Multipliers)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol),	Until the earlier of the Termination Date

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
paragraph 5 (Contract Waste Composition Protocol)	and the Expiry Date
Schedule 20 (Compensation on Termination for Planning Failure)	Until the earlier of the Termination Date and the Expiry Date
Schedule 21 (Unitary Charge Adjustment Protocol)	Until the earlier of the Termination Date and the Expiry Date
Equivalent commercially sensitive contractual positions in the Sub-Contracts.	Until the earlier of the Termination Date and the Expiry Date

PART 2 - COMMERCIALLY SENSITIVE MATERIAL

Part A – General

Commercially Sensitive Material	Time period for which that material remains confidential
Base Case	Until the earlier of the Termination Date and the Expiry Date
Contractor's Proposals	Until the earlier of the Termination Date and the Expiry Date
Service Delivery Plan	Until the earlier of the Termination Date and the Expiry Date
Works Delivery Plan	Until the earlier of the Termination Date and the Expiry Date
Works Programme	Until the earlier of the Termination Date and the Expiry Date
Construction Documents	Until the earlier of the Termination Date and the Expiry Date
Entsorga Licence Agreement	Until the earlier of the Termination Date and the Expiry Date
Energos Licence Agreement	Until the earlier of the Termination Date and the Expiry Date
Base Case Output Sheet	Until the earlier of the Termination Date or the Expiry Date
The Settlement Agreement	Until the earlier of the Termination Date and the Expiry Date
Technical Support Agreement between Energos and the Operating Contractor	Until the earlier of the Termination Date and the Expiry Date
All contracts entered into by each of the Operating Contractor and the Construction Contractor with subcontractors in relation to the Project	Until the earlier of the Termination Date and the Expiry Date
Information relating to the Contractor's (or where relevant, any Sub-Contractor of any tier's) price including any build-up or breakdown of total cost or any element thereof including profit margins, contract sum analysis, overheads, overhead and profit element, pricing of project risks, preliminaries and payment terms, amount of borrowing of both senior and subordinated debt	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Material	Time period for which that material remains confidential
Such elements of the Contractor's bid (together with clarifications and correspondence during the bid process) to the extent that such material contains details of the Contractor's bid response to any of the Contract provisions set out in Part 1 above	Until the earlier of: (i) the earlier of the Termination Date or the Expiry Date; and (ii) (where the relevant section of the Contract is referred to in Part 1 above, the time period specified in Part 1 in relation to such section of the Contract.
Assessment and evaluation information relating to the Contractor's bid where such material contains details of the Contractor's bid response to any of the Contract provisions set out in Part 1 above	Until the earlier of: (i) the earlier of the Termination Date and the Expiry Date; and (ii) where the relevant section of the Contract is referred to in Part 1 above, the time period specified in Part 1 in relation to such section of the Contract.
Information on the Contractor's approach to and manner of performing the Works/Services including design information, method statements and programme analysis together with any equivalent information concerning any Sub-Contractor and the Contractor's negotiations with any Sub-Contractor	Until the earlier of the Termination Date and the Expiry Date
Information relating to the Contractor's response to any Council Change proposed by the Councils, and relating to any Contractor Notice of Change, or proposal following a Change in Law, Relief Event, Compensation Event or a Force Majeure Event, response to a request from the Councils pursuant to Schedule 23 (CHP Protocol) or similar event (including correspondence, meeting minutes, emails, contract change notices, presentation materials, models etc), but only to the extent relating to: (i) financial matters, including the breakdown of the Contractor's or any sub-contractor's price and the terms and any amount of borrowing or financing proposed; (ii) details of the impact of the relevant event on the Contractor's or any sub-contractor's performance of the Works and/or the Services; and	Until the earlier of the Termination Date and the Expiry Date.

Commercially Sensitive Material	Time period for which that material remains confidential
(iii) details of the Contractor's or any sub-contractor's technical proposals for carrying out the relevant matters, including timetables and programming for performance of the Works and Services and any variations or additions to the Works and Services.	
Information on sums recovered from the Contractor (but not the fact that sums have been recovered) such as damages, insurance claims, deductions and sums recovered under indemnities or warranties	3 years from when sums were due and payable.
Any invoices or reports pursuant to clause 32, Schedule 4 (Reporting) and/or Schedule 14 (Performance Mechanism), unless the Contractor agrees otherwise.	Until the earlier of the Termination Date and the Expiry Date.
Information in relation to insurance premia and deductibles	Until the earlier of the Termination Date and the Expiry Date.
Joint Insurance Account - account details (including number and name of bank) and the level of funds held in the account at any time	Until the earlier of the Termination Date and the Expiry Date.
Information in relation to warning notices, except for the fact that a warning notice has been served	Until the earlier of the Termination Date and the Expiry Date.
The Financing Agreements, including the Shareholders Agreement and all documents in relation to subordinated lending and equity investment but excluding the Direct Agreement	Indefinitely.
<p>Information provided to the Councils pursuant to any of the following:</p> <p>(i) clause 36.2 (Provision of Information);</p> <p>(ii) clauses 38.3.1 and/or 38.3.2;</p> <p>(ii) clause 47.1.4;</p> <p>(iv) paragraph 1.5.1 of Schedule 1 (Specification);</p> <p>(v) paragraph 3.4.7 and/or paragraph 3.4.8 of the Specification;</p> <p>(vi) paragraph 6.3.3 of the Specification.</p>	Until the earlier of the Termination Date and the Expiry Date.

Commercially Sensitive Material	Time period for which that material remains confidential
<p>excluding:</p> <p>(i) items lodged with Companies House,</p> <p>(ii) information already held by the Councils (other than where such information is otherwise covered by this Schedule 12)</p> <p>(iii) any information the disclosure of which would not cause commercial prejudice to the Contractor and/or the Councils.</p>	and the Expiry Date.

Section B: Operating Sub-Contract: Commercially Sensitive Contractual Provisions

Commercially Sensitive Material	Time periods for which that material remains confidential
Definition of Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of Indirect Losses	Until the earlier of the Termination Date and the Expiry Date
Definition of Material Adverse Effect	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Breakage Costs	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Persistent Breach	Until the earlier of the Termination Date and the Expiry Date
Definition of Replacement Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of Replacement Security	Until the earlier of the Termination Date and the Expiry Date
Clause 25.4 (Minimum Waste Delivery Obligation)	Until the earlier of the Termination Date and the Expiry Date
Clause 25A (Documents and Cooperation)	Until the earlier of the Termination Date and the Expiry Date
Clause 27A (Lifecycle Works)	Until the earlier of the Termination Date

Commercially Sensitive Material	Time periods for which that material remains confidential
	and the Expiry Date
Clause 27B (Defects)	Until the earlier of the Termination Date and the Expiry Date
Clause 37 (Renewables Obligation Certificate Regime)	Until the earlier of the Termination Date and the Expiry Date
Clauses 54 (Direct Agreements) to 68 (Expiry of Service Period) inclusive	Until the earlier of the Termination Date and the Expiry Date
Clause 69 (Indemnity)	Until the earlier of the Termination Date and the Expiry Date
Clause 92 (Financial Adjustments)	Until the earlier of the Termination Date and the Expiry Date
Clause 93 (Equivalent Project Relief) and Clause 94 (Parallel Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 96 (Interfaces with the Councils and other Contractor Subcontractors)	Until the earlier of the Termination Date and the Expiry Date
Clause 101 (Guarantees)	Until the earlier of the Termination Date and the Expiry Date
Clause 103 (Collateral Warranties and Direct Agreements)	Until the earlier of the Termination Date and the Expiry Date
Clause 104 (Limitation of Liability)	Until the earlier of the Termination Date and the Expiry Date
Clause 108 (Contractor Pursuit of Vertical Interface Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 109 (Letter of credit in first two years of operations)	Until the earlier of the Termination Date and the Expiry Date
Clause 110 (Net Worth Test)	Until the earlier of the Termination Date and the Expiry Date
Schedule 1 (Specification)	Until the earlier of the Termination Date and the Expiry Date
Commercial details as to exclusions or limits on liability, indemnities and warranties, level of pricing, caps or damages contained within the Contract which departs from standard drafting.	Until the earlier of the Termination Date and the Expiry Date
Schedule 3 (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Part 2 (Proposed Workforce, Remuneration	Until the earlier of the Termination Date

Commercially Sensitive Material	Time periods for which that material remains confidential
Costs and Reorganisation Costs of Schedule 10 (Employee Information)	and the Expiry Date
Schedule 14 (Performance Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol), paragraph 5 (Contract Waste Composition Protocol)	Until the earlier of the Termination Date and the Expiry Date
Schedule 25 (Direct Agreements)	Until the earlier of the Termination Date and the Expiry Date
Schedule 26 (Parent Company Guarantees)	Until the earlier of the Termination Date and the Expiry Date
Schedule 28 (The HWRC Contractor Direct Agreement)	Until the earlier of the Termination Date and the Expiry Date
Schedule 29 (Lifecycle)	Until the earlier of the Termination Date and the Expiry Date

Section C: Construction Contract: Commercially Sensitive Contractual Provisions

Commercially Sensitive Material	Time periods for which that material remains confidential
Definition of Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Contract Sum	Until the earlier of the Termination Date and the Expiry Date
Definition of Defect	Until the earlier of the Termination Date and the Expiry Date
Definition of Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of ICL Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Indirect Losses	Until the earlier of the Termination Date and the Expiry Date
Clause 11A (ROC Accreditation)	Until the earlier of the Termination Date and the Expiry Date
Clause 11B (Grid Connection)	Until the earlier of the Termination Date or

Commercially Sensitive Material	Time periods for which that material remains confidential
	the Expiry Date
Clause 21.3 (Diversion Target Default)	Until the earlier of the Termination Date or the Expiry Date
Clause 22A (Defects)	Until the earlier of the Termination Date or the Expiry Date
Clause 22B (Reliability Test)	Until the earlier of the Termination Date or the Expiry Date
Clause 22C (Availability Tests)	Until the earlier of the Termination Date or the Expiry Date
Clause 22D (Performance Tests)	Until the earlier of the Termination Date or the Expiry Date
Clause 22E (Performance Tests Default)	Until the earlier of the Termination Date or the Expiry Date
Clause 22F (Defects Losses)	Until the earlier of the Termination Date and the Expiry Date
Clause 22G (Deductions)	Until the earlier of the Termination Date and the Expiry Date
Clause 23 (Turbine Delay)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.1 (Works Payment)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.10 (Property in Goods, Material and Plant)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.11 (Payment of Outgoings)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.11A (Income During Commissioning)	Until the earlier of the Termination Date and the Expiry Date
Clause 30.12 (Payment of Retention)	Until the earlier of the Termination Date or the Expiry Date
Clause 34 (Interest on Late Payment)	Until the earlier of the Termination Date or the Expiry Date
Clauses 54 (Direct Agreements) to 67B (Consequences of Termination) inclusive	Until the earlier of the Termination Date and the Expiry Date
Clause 69 (Indemnity) and Clause 69A (Limits on ICL's Liability)	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Material	Time periods for which that material remains confidential
Clause 69B (Limitation Period)	Until the earlier of the Termination Date or the Expiry Date
Clause 93 (Equivalent Project Relief) and Clause 94 (Parallel Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 97 (Guarantee and Bonds)	Until the earlier of the Termination Date or the Expiry Date
Clause 99 (Collateral Warranties and Direct Agreements)	Until the earlier of the Termination Date or the Expiry Date
Clause 100 (Interface Agreement)	Until the earlier of the Termination Date and the Expiry Date
Clause 102 (Compensation for Delayed Completion)	Until the earlier of the Termination Date and the Expiry Date
Clause 104 (Parallel Loan Agreement)	Until the earlier of the Termination Date and the Expiry Date
Clause 105 (Look-Forward Termination Test)	Until the earlier of the Termination Date or the Expiry Date
Schedule 1 (Contractor Requirements)	Until the earlier of the Termination Date or the Expiry Date
Commercial details as to exclusions or limits on liability, indemnities and warranties, level of pricing, caps or damages contained within the Contract which departs from standard drafting.	Until the earlier of the Termination Date and the Expiry Date
Schedule 3 (ICL's Proposals)	Until the earlier of the Termination Date and the Expiry Date
Schedule 5 (Test Protocol)	Until the earlier of the Termination Date and the Expiry Date
Schedule 8 (Environmental Provisions)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol), paragraph 5	Until the earlier of the Termination Date or the Expiry Date
Schedule 24 (Milestone and Maximum Payment Schedule)	Until the earlier of the Termination Date or the Expiry Date
Schedule 25 (Parent Company Guarantee)	Until the earlier of the Termination Date or the Expiry Date
Schedule 26 (Bonds)	Until the earlier of the Termination Date or the Expiry Date

Commercially Sensitive Material	Time periods for which that material remains confidential
Schedule 27 (Direct Agreements)	Until the earlier of the Termination Date or the Expiry Date
Schedule 28 (Key Sub-Contractor Collateral Warranty)	Until the earlier of the Termination Date and the Expiry Date
Schedule 30 (Parallel Loan Agreement)	Until the earlier of the Termination Date or the Expiry Date