

South Ayrshire Council

Report by Director of Housing, Operations and Development
to Cabinet
of 21 January 2025

Subject: Wallacetown Community Energy Project

1. Purpose

- 1.1 The purpose of this report is to present the Cabinet with an overview of the Wallacetown Community Energy Project and the associated Project Agreement, and to seek approval to provide: a Licence for Fort, Seafield and Wallacetown Community Association to utilise the roofs of three Council owned buildings for project purposes.

2. Recommendation

2.1 It is recommended that the Cabinet:

- 2.1.1 approves the Chief Governance Officer negotiating and concluding a Project Agreement (see draft terms at Appendix 1) between the Council and Fort, Seafield and Wallacetown Community Association (the Association) which includes granting, to the Association, a 25 year licence to occupy the roofs of three school buildings for the purpose of generating electricity through solar panels;**
- 2.1.2 agrees that the Council will purchase the renewable electricity generated from these solar panels for use in the three school buildings in accordance with the provisions of the Project Agreement concluded with the Association; and**
- 2.1.3 notes the net-zero, financial, educational and capacity building benefits that the project offers.**

3. Background

- 3.1 The Wallacetown Community Energy Project (WCEP) seeks to install community-owned solar PV panels onto the roofs of three Council buildings in or around the Wallacetown area – Newton Primary School, St Johns Primary School and Wallacetown Early Years Centre. The Fort, Seafield and Wallacetown Community Association (the Association) has secured grant funding to cover the costs of buying and installing the PV panels and supporting infrastructure. The power generated by the cells will be sold by the Association to SAC for use in the three host buildings, with the surplus sold into the Grid via a Power Purchase Agreement.
- 3.2 The income earned from selling the power, after running costs, will be used by the Association to establish a Community Benefit Fund for the Wallacetown community.

- 3.3 The project is led by the Association, a registered Scottish Charitable Incorporated Organisation (SCIO) with membership open to any adult living in the FSW area. The PV cells will be owned and operated by the Association. A Management Contractor will undertake day-to-day running and report to the Association's Board. The Association will be responsible for all maintenance, repair, management and insurance costs associated with the cells and the project. These management and other running costs will be met from income earned through selling the power generated.
- 3.4 Use of the roofs for the 25 year duration of the project will be licenced by SAC to the Association. Respective responsibilities and liabilities for planned and reactive maintenance/repairs to the buildings and panels are defined in the draft Project Agreement.
- 3.5 A Feasibility Study has been completed by external consultants (Ricardo Energy and Environment) which includes projections for power generated carbon savings and income. Structural Roof Surveys have confirmed the three roofs are capable of supporting the equipment. The Distribution Network Operator has confirmed that connection to the grid is achievable.
- 3.5 The Association has secured grant funding of £550,000 (five hundred and fifty thousand pounds sterling) to cover all project installation and set up costs.
- 3.6 The project is forecast to deliver the following benefits over its 25 year duration:
- 3.6.1 Reduced Carbon footprint – a total lifetime carbon saving of 306 tCO₂, contributing to the Council's target for reducing greenhouse gas emissions by 75% by 2030 (and achieving net zero by 2045);
 - 3.6.2 Financial saving to the Council - power purchased by the Council for use in the three schools will be at a rate tracking 10% below the 'market rate' available to the Council, reviewed and agreed annually;
 - 3.6.3 A new Community Benefit Fund will be created for Wallacetown. The Feasibility Report estimates total income of £1.2m over 25 years after Operation and Maintenance costs;
 - 3.6.4 Additional partnership activity will provide new education and training opportunities. The project has developed links to Dumfries House/King's Foundation, Fraser of Allander Institute, University of Strathclyde and Working for Wallacetown.
 - 3.6.5 'Mimic Boards' will be installed in the three schools, at the project's expense, providing staff and pupils with live performance data for the systems on their respective roofs. It is hoped this will inform STEM learning.

4. Proposals

- 4.1 The project will install a total of 755 solar PV cells with associated inverters, cabling and meters across the three school buildings.
- 4.2 The Association will undertake procurement of contractors and equipment between now and March 2025.

- 4.3 Installation works would be undertaken during the 2025 summer holiday period, minimising any disruption to the running of the buildings.
- 4.4 Day-to-day monitoring and running of the systems, negotiation of PPA rates and administration of the Community Benefit Funds will be undertaken by contractors reporting to the Association's Board.
- 4.5 At the end of the 25 years, the panels will be removed at the expense of the Association, or, at the Council's discretion, the panels can be left in place with ownership transferring to the Council.

5. Legal and Procurement Implications

- 5.1 The Council will be required to sign and observe the terms of a Project Agreement (if approved). Final terms will be agreed in discussion between the parties and a draft is attached at Appendix 1 for Cabinet consideration.
- 5.2 There are no procurement implications for the Council arising from this report. All project procurement will be undertaken by the Association.

6. Financial Implications

- 6.1 The Council will achieve a financial saving on the cost of electricity used in the three host buildings. The Council will purchase power from the project at 10% below the 'Market Rate' available to the Council. Market Rate will be the best rate available to the Council through the National Framework, as advised by Scottish Procurement. Currently, National Framework rates are negotiated collectively by Scottish Procurement on behalf of SAC and other Scottish public bodies. Councils are advised of negotiated rates for the year ahead in March or April each year.
- 6.2 All project installation and running costs will be met by the Association.

7. Human Resources Implications

- 7.1 Not applicable.

8. Risk

8.1 Risk Implications of Adopting the Recommendations

- 8.1.1 A Risk Register has been established for the project – see Appendix 2. A number of potential risks have been identified alongside an estimation of their likelihood, impact and mitigation.

8.2 Risk Implications of Rejecting the Recommendations

- 8.2.1 The range of benefits outlined above at 3.6 will not be realised.

9. Integrated Impact Assessment

- 9.1 The proposals in this report have been assessed through the Integrated Impact Assessment process. There are potential positive impacts of agreeing the recommendations. The IIA Summary Report is attached as Appendix 3. No significant negative impacts have been identified.

10. Sustainable Development Implications

- 10.1 **Considering Strategic Environmental Assessment (SEA)** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

11. Options Appraisal

- 11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

12. Link to Council Plan

- 12.1 The matters referred to in this report contribute to Priority 3: Civic and Community Pride, of the Council Plan 2023-28, by strengthening civic pride in the Fort, Seafield and Wallacetown area and growing community capacity.

13. Results of Consultation

- 13.1 Consultation has taken place with Councillor Martin Kilbride, Portfolio Holder for Buildings, Housing and Environment, and the contents of this report reflect any feedback provided.

- 13.2 The Council's Education Support Service has also been consulted.

14. Next Steps for Decision Tracking Purposes

- 14.1 If the recommendations above are approved by Members, the Director of Housing, Operations and Development will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Cabinet in the 'Council and Cabinet Decision Log' at each of its meetings until such time as the decision is fully implemented:

<i>Implementation</i>	<i>Due date</i>	<i>Managed by</i>
Conclude and signing of Project Agreement	31 March 2025	Service Lead – Asset Management and Community Asset Transfer

Background Papers None

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Date: 10 January 2025

AGREEMENT

Between

SOUTH AYRSHIRE COUNCIL

And

FORT, SEAFIELD & WALLACETOWN COMMUNITY ASSOCIATION

relating to

the installation of solar photovoltaic systems on the roofs of public buildings in South Ayrshire to generate electricity.

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AGREEMENT

Between

SOUTH AYRSHIRE COUNCIL, a local authority constituted in terms of the Local Government etc (Scotland) Act 1994 having its headquarters at County Buildings, Wellington Square, Ayr (“**the Council**”); and

FORT, SEAFIELD & WALLACETOWN COMMUNITY ASSOCIATION, a Scottish charitable incorporated organisation with registration number SC051189 and having its registered office at 6 Carwinshoch View Ayr. KA7 4AY (“**FSWCA**”).

- (A) FSWCA and the Council have agreed that FSWCA will install solar photovoltaic panels on the roofs of public buildings in South Ayrshire as detailed in Part 2 of the Schedule (Relevant Buildings), and then undertake the business of generating electricity from those panels which it will supply to those buildings at an agreed price and will export to the electricity transmission network.
- (B) FSWCA's income will come from the Power Purchase Agreement (PPA) Payments, or their equivalent, paid for renewably generated electricity and from the sale of electricity to the buildings.
- (C) FSWCA seeks to contribute to supporting the local community; contribute to the activities of the public buildings on which the panels are installed educationally and in the achievement of their sustainability agendas; generate renewable energy; improve the efficient use of energy; engage the community and schools in issues relating to climate change, energy and practical local solutions; and engage in community development, cohesion and self-help. These activities will be guided by 'Community Advancement and Development Principles' as per the objectives of FSWCA.

1. DURATION

This Agreement shall commence on the last date of its signing and, subject to earlier termination in accordance with its terms, continue for a period of twenty-five (25) years in respect of individual Relevant Buildings only subject to their continued ownership by the council. There is an option to extend the period of this Agreement by mutual agreement between the parties involved.

2. CONDITION PRECEDENT

- 2.1 This Agreement is subject to, and conditional in all respects on:
- (a) the Distribution Network Operator applicable to the Relevant Buildings consenting to the installation of the Solar PV System and its connection to the Electricity Network.
 - (b) the price of the Solar PV System not having increased beyond the grant funding available at the time of installation on the Relevant Buildings; and
 - (c) the PPAs and projected income having not degressed to the point where FSWCA considers acting reasonably, that the Project is no longer financially viable.
- 2.2 If any of the foregoing conditions are not fulfilled to the satisfaction of FSWCA, FSWCA shall inform the Council and this Agreement shall be deemed terminated by FSWCA and neither of the parties shall have any rights or obligations under this Agreement.

3. CONSENTS

- 3.1 FSWCA shall ensure that all Necessary Consents are in place to install the Solar PV System and the Council shall not incur any costs associated with obtaining, maintaining or complying with the same.
- 3.2 FSWCA confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract.
- 3.3 The Council's written approval of the Specification is required before the installation of the Solar PV System or prior to any changes to the Solar PV System being carried out, such approval not to be unreasonably withheld or delayed.

4. INSTALLATION

- 4.1 FSWCA shall install the Solar PV System and the Educational Package on the following terms: the Solar PV System shall be installed in accordance with the Specification.
- 4.2 FSWCA shall satisfy itself in consultation with the Council, the Installer and the District Network Operator that the state of the roofs of the Relevant Buildings and their power supply is appropriate and sufficient to support the installation and initial operation of the Solar PV System.

4.3 FSWCA shall seek to procure that the Council has the same rights against its suppliers, contractors and their sub-contractors relating to the Solar PV System as FSWCA has in the event that FSWCA ceases to operate the Solar PV System.

4.4 Any timetable given by FSWCA for completing installation works is an estimate only. Whilst FSWCA will use its reasonable endeavours to complete installation works within the estimated timescale, FSWCA reserves the right to provide the Council with a revised timetable to complete the installation works. For the avoidance of doubt, any revision to the timetable shall not impact on the Term.

4.5 The Solar PV System shall belong to FSWCA if and until ownership is transferred to the Council pursuant to this Agreement.

5. ADDITIONAL POWER GENERATION INSTALLATIONS

5.1 Subject to giving FSWCA reasonable prior written notification and the other terms of this clause 5, the Council retains the right to install equipment including equipment that will deliver additional electricity generation capabilities to specific buildings as it see fit.

5.2 Where the proposed installation of equipment, including additional electricity generation equipment, would impact on the operation of, or the revenue generated by, the Solar PV System or otherwise the terms of this Agreement then the Council will promptly discuss matters with FSWCA and mitigate against any negative impacts as far as is practicable.

5.3 Notwithstanding the foregoing, the Council shall not do anything which would impact upon the financial revenue of FSWCA. The Council will also bear all costs associated with any grid upgrades required arising out of the installation of any additional electricity generation equipment that is not part of the Solar PV System, on Relevant Buildings.

6. SERVICE LEVELS

- 6.1 FSWCA shall provide electricity to the Council for the Term in accordance with the Service Levels and the terms, conditions and provisions of this Agreement.

7. STANDARDS FOR SERVICES

- 7.1 FSWCA shall provide the Services:

- (a) in accordance with the terms of this Agreement;
- (b) with reasonable skill and care and in accordance with Good Industry Practice;
- (c) using its reasonable endeavours in accordance with the times agreed with the Council and in accordance with any project plan agreed with the Council; and
- (d) in accordance with all Applicable Laws.

- 7.2 FSWCA shall (and shall procure that FSWCA's Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement and FSWCA shall also undertake, or refrain from undertaking, such acts as the Council reasonably requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
- (b) not unlawfully discriminate within the meaning and scope of any Applicable Law relating to discrimination in employment; and
- (c) comply with the Equality Act 2010.

- 7.3 The Council shall:

- (a) co-operate with FSWCA in all matters relating to the Project and the provision of the Services;
- (b) provide in a timely manner such access to the Council's premises and data, and such other facilities, as is reasonably requested by FSWCA;
- (c) provide in a timely manner such information as FSWCA may request, and ensure that such information is accurate in all material respects; and
- (d) provide reasonable cooperation and assistance to FSWCA's appointed Sub-Contractors.

- 7.4 If FSWCA's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Council or the Council's agents, sub-

contractors or employees, the Council shall in all circumstances be liable to pay to FSWCA on demand all reasonable costs, charges or losses sustained or incurred by it, subject to FSWCA advising the Council that such act or omission is preventing or delaying FSWCA's performance of its obligations and confirming such costs, charges and losses to the Council in writing.

- 7.5 The Relevant Buildings are not required to use the Educational Package. However, FSWCA hopes that they will do so and that the operators of the Relevant Buildings will seek to promote the Project to its staff, users and local community and encourage them to be more aware of energy and climate change and that the Council will encourage press and other coverage of the Project. Subject to clause 38 (Publicity) the Council agrees that FSWCA may include its name in documents it produces to promote the Project. FSWCA and the Council will work together to help the Council contribute in this manner.

8. HEALTH AND SAFETY

- 8.1 FSWCA shall promptly notify the Council of any health and safety hazards of which it is aware which may arise in connection with the performance of this Agreement. The Council shall promptly notify FSWCA of any health and safety hazards that may exist or arise at a Relevant Building and that may affect FSWCA in the performance of this Agreement.
- 8.2 While on a Relevant Building, FSWCA shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Relevant Building and notified to FSWCA and any directions made by the Council in respect of health and safety issues.
- 8.3 FSWCA shall notify the Council immediately in the event of any incident occurring in the performance of this Agreement on a Relevant Building where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 FSWCA shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on a Relevant Building in the performance of this Agreement.
- 8.5 Each party (or their appointed contractors as appropriate) shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the other party on request.

9. LICENCE

9.1 The Council grants to FSWCA a Licence in the terms set out in Part 8 of the Schedule.

10. PPA

10.1 FSWCA and the Council shall enter into an agreement for the purchase of power generated by the systems to be supplied and used in each of the Relevant Buildings and both parties shall be bound by the terms set therein.

10.2 FSWCA will enter into separate PPA (or equivalent) arrangements to export surplus power, not used by the Relevant Buildings, into the electricity transmission network.

11. PAYMENT

11.1 The financial provisions set out in Part 7 of the Schedule (Financial Provisions) shall apply to this Agreement.

12. PERSONNEL USED TO PROVIDE THE SERVICES

12.1 At all times, FSWCA shall ensure that:

- (a) each of FSWCA's Personnel (including any Sub-Contractor) is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) only those people who are authorised by FSWCA (under the authorisation procedure which is as follows: FSWCA and its Sub-Contractor(s) shall have no right of access to any Relevant Building(s) without the prior written consent of the Council which consent shall not be unreasonably withheld or delayed. The Council may grant consent subject to the FSWCA's Personnel being escorted by an employee of the Council. Access shall take place at such time or times as may be convenient to the Council. Any work to be carried out to the Solar PV System must be undertaken by an approved specialist contractor. Upon request, the Council will issue a list of approved contractors, any one of them may be employed by FSWCA. Any contractor not on the Council's approved list will not be allowed

access to the Relevant Building(s), such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the removal of any redundant equipment requires the approval of the Council and

- (c) all of FSWCA's Personnel shall comply with all of the Council's policies (as notified in advance and in writing to FSWCA) including those that apply to persons who are allowed access to the applicable Council's Premises.

12.2 The Council may refuse to grant access to, and remove, any of FSWCA's Personnel who do not comply with any of the policies referred to in clause 12.1, or if they otherwise present a security threat provided, they promptly inform FSWCA of the reasons for refusing access or removing FSWCA Personnel.

13. STAFF VETTING

13.1 The parties acknowledge that FSWCA is the organisation with ultimate responsibility for the management and control of the Regulated Work provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups (Scotland) Act 2007.

13.2 FSWCA shall ensure that all individuals engaged in the provision of the Services are:

- (a) subject to a valid enhanced disclosure check undertaken through Disclosure Scotland including a check against the children's barred list; and
- (b) FSWCA shall monitor the level and validity of the checks under this clause 13.2 for each of its Personnel.

13.3 FSWCA warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by FSWCA in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups (Scotland) Act 2007 and any regulations made thereunder, as amended from time to time.

13.4 In so far as it is not restricted or otherwise prevented from doing so by Applicable Law, FSWCA shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 13 have been met.

13.5 FSWCA shall refer information about any person carrying out the Services to Disclosure Scotland where it removes permission for such person to carry out

the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.

- 13.6 FSWCA shall not knowingly employ or use the services of any person who is barred from, or whose previous conduct of which FSWCA is aware or records to which FSWCA has access indicate that they would not be suitable to carry out Regulated Work or who may otherwise to the knowledge of FSWCA present a risk to service users.
- 13.7 This clause is only applicable to those FSWCA Personnel who have regular contact with any children at a Relevant Building (for example FSWCA Board members/volunteers undertaking educational activities with any children) and does not apply to any FSWCA Personnel/Sub-Contractor installing, maintaining and removing the Solar PV System who would not have regular contact with any children at a Relevant Building.

14. TUPE

The parties agree that the provisions of Part 4 of the Schedule (TUPE) shall apply to any Relevant Transfer of staff under this Agreement.

15. REPORTING AND MEETINGS

- 15.1 FSWCA shall provide the Management Reports in the form and at the intervals set out in Part 3 of the Schedule (Contract Management).
- 15.2 The Authorised Representatives and relevant Personnel shall meet in accordance with the details set out in Part 3 of the Schedule (Contract Management) and FSWCA shall, at each meeting, present its previously circulated Management Reports in the format set out in that Part of the Schedule.

16. MONITORING

- 16.1 The Council may monitor the performance of the Services by FSWCA provided that such monitoring does not unreasonably interfere with or disrupt FSWCA or otherwise delay the provision of the Services by FSWCA or the performance of the Project.
- 16.2 FSWCA shall provide reasonable co-operation and shall procure that its Sub-Contractors provide reasonable co-operation, with the Council in carrying out the monitoring referred to in clause 16.1 at no additional charge to the Council.

17. VARIATION

17.1 No variation of this Agreement shall be effective unless it is in writing and signed by both parties.

18. TERM AND TRANSFER OF OWNERSHIP OF THE SOLAR PV SYSTEM

18.1 On termination of this Agreement in respect of a Relevant Building, at any time prior to the end of year 25 from the date of signing of this Agreement the Council shall have the option of asking FSWCA either:

- (a) to remove the Solar PV System from the Relevant Building; or
- (b) to leave the Solar PV System on the Relevant Building and transfer ownership of the Solar PV System to the Council.

18.2 FSWCA will undertake a review of the condition and performance of the Solar PV Systems on Relevant Buildings twelve (12) months prior to the end of year 20 from the date of signing of this Agreement to allow the Council to determine whether or not the Council wishes FSWCA to remove the Solar PV System on termination. FSWCA will provide to the Council information on the anticipated lifespan and any existing warranties of the Solar PV System. The Council will respond in writing to FSWCA's review within three (3) months and inform FSWCA whether or not it will be required to remove the Solar PV System on termination.

18.3 If FSWCA have not provided the Council with a review by the end of year 22 from the date of signing of this Agreement and the Council has not notified FSWCA in writing of its failure to provide the review, then it will be assumed that the Council will be retaining the Solar PV System.

18.4 If FSWCA has completed the review, and the Council has not responded in writing within the timescale stated in clause 18.2, FSWCA will issue a final reminder for a response which must be answered by the Council within one month of receipt. If the Council fails to meet this timescale it will be assumed that the Council will be retaining the Solar PV System.

18.5 FSWCA shall have the option to extend the Term upon written notice to the Council prior to the end of year 22 from the date of signing and for a period of extension to be agreed by both parties.

18.6 The parties shall co-operate generally in relation to the transfer of ownership or removal of the Solar PV System and shall take final meter readings to enable FSWCA to receive any PPA Payments and Export Payments due to it.

19. DISPUTE RESOLUTION

- 19.1 If any dispute arises in relation to this Agreement the parties' Authorised Representatives shall endeavour to resolve it to the parties' mutual satisfaction.
- 19.2 If the parties' Authorised Representatives cannot resolve any dispute within ten (10) Working Days of the dispute arising, then the parties shall attempt in good faith to negotiate a settlement to any dispute and such efforts shall involve the escalation of the dispute to a senior officer of the Council and to Chair of the governing board of FSWCA.
- 19.3 In the event that the parties are unable to negotiate a settlement, then they may, with the agreement of both parties, first seek to refer the dispute for mediation, arbitration or other alternative dispute resolution but neither party shall be obliged to agree to do so before recourse to litigation.
- 19.4 In the event that the parties are unable to reach a settlement the issue in dispute shall be referred to an independent arbiter as appointed by the Law Society of Scotland whose decision shall be binding on each party.
- 19.5 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

20. SUB-CONTRACTING AND ASSIGNATION

- 20.1 Subject to clause 20.3,
- (a) neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party; and
 - (b) neither party may sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Council; provided that FSWCA shall be free to sub-contract the administration and management of the Services and the installation, operation, development and maintenance of the Solar PV System without the consent of the Council.
- Any written consent required pursuant to this clause 20.1 should not be unreasonably withheld or delayed.
- 20.2 In the event that FSWCA enters into any Sub-Contract in connection with this Agreement it shall:
- (a) remain responsible to the Council for the performance of its obligations under this Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractors;

- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative. All such copy Sub-Contracts shall constitute "Confidential Information" for the purposes of this Agreement.

20.3 Notwithstanding clause 20.1 the Council shall be entitled to assign or novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

20.4 Each party shall do or procure all such further acts and shall execute or shall procure the execution of such documents as may be necessary for the other party to enjoy the full benefit of this clause 20.

WARRANTIES AND LIABILITY

21. WARRANTIES

21.1 Each party warrants, represents and undertakes that:-

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by a duly authorised representative of that party;
- (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement;
- (d) all Necessary Consents will be obtained for the performance of the Licence (including from any insurer of the Relevant Buildings and any landowner); and
- (e) once duly executed, this Agreement will constitute its legal, valid and binding obligations.

22. LIMITATION AND EXCLUSIONS

22.1 The following provisions set out the entire financial liability of FSWCA (including any liability for the acts or omissions of its Personnel and Sub-contractors) to the Council in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Council of the Services, the Solar PV System, the Project or any part of them; and
- (c) any representation, statement or delictual act or omission (including negligence) arising under or in connection with this Agreement.

22.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

22.3 Nothing in this Agreement excludes or otherwise limits the liability of FSWCA for:-

- (a) death or personal injury caused by FSWCA's negligence or the negligence of its Personnel; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of any obligation as to title implied by statute; or
- (d) any other liability that cannot be excluded or limited by applicable law.

22.4 Subject to Clauses 22.2 and 22.3, FSWCA shall not be liable whether in contract, delict (including negligence), breach of statutory duty, or otherwise for:

- (a) any loss of profits, anticipated savings, turnover, loss of business, contracts, depletion of goodwill or similar losses, loss or corruption of data or information or pure economic loss, all of which are indirect in nature; or
- (b) any punitive, special, indirect or consequential loss costs, damages, charges or expenses

in each case however arising.

22.5 Subject to clauses 22.2, 22.3 and 22.4, FSWCA's total liability in contract, delict (including negligence), breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance or contemplated performance of this Agreement shall be limited to the amount that FSWCA recovers pursuant to the policies of insurance giving effect to the Required Insurances as defined in clause 24.1 (Insurance).

23. INDEMNITIES

- 23.1 FSWCA shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in delict (including negligence), default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, willful default or fraud of itself or of its Personnel save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or Applicable Law by the Council or its representatives.
- 23.2 The Council shall indemnify and keep indemnified FSWCA against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in delict (including negligence), default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, willful default or fraud of itself or of its personnel save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or Applicable Law by FSWCA or its representatives.
- 23.3 If any third party makes a claim against, or notifies an intention to make a claim against the party to be indemnified (the "**Indemnified Party**") which may reasonably be considered as likely to give rise to a liability under this indemnity ("**a relevant claim**"), the Indemnified Party shall:
- (a) as soon as reasonably practicable give written notice of that matter to the indemnifying party (the "**Indemnifying Party**"), specifying in reasonable detail the nature of the relevant claim;
 - (b) use all reasonable endeavours to mitigate any loss arising out of the relevant claim;
 - (c) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Party;
 - (d) give the Indemnifying Party and its professional advisers reasonable access to the premises and personnel of the Indemnified Party and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party so as to enable the Indemnifying Party and its professional advisers to examine such premises, assets, accounts, documents and records, and to take copies at their own expense for the purpose of assessing the merits of the relevant claim; and

- (e) subject to the Indemnifying Party indemnifying the Indemnified Party to the Indemnified Party's reasonable satisfaction against any liability, costs, damages or expenses which may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.

24. INSURANCE

- 24.1 FSWCA shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover set out in Part 5 of the Schedule (the **Required Insurances**) in respect of all risks which may be incurred by FSWCA, arising out of FSWCA's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 24.2 FSWCA shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, FSWCA fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from FSWCA.
- 24.4 The terms of any insurance or the amount of cover shall not relieve FSWCA of any liabilities under this Agreement.
- 24.5 FSWCA shall hold and maintain the Required Insurances for a minimum of five (5) years following the expiration or earlier termination of this Agreement.

25. FREEDOM OF INFORMATION

- 25.1 FSWCA acknowledges that the Council is subject to the requirements of the FOISA and the Environmental Information (Scotland) Regulations and shall provide such assistance and co-operation to the Council as the Council may reasonably require in respect of this Agreement (at FSWCA's expense) to enable the Council to comply with these information disclosure requirements.
- 25.2 FSWCA shall and shall procure that its Sub-Contractors shall:
 - (a) transfer any Request for Information received by FSWCA or its Sub-Contractors in respect of this Agreement to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

- (b) provide the Council with a copy of all Information held on behalf of the Council in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the Environmental Information (Scotland) Regulations.
- 25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information (Scotland) Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall FSWCA respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.5 FSWCA acknowledges that the Council may, acting in accordance with the Code, be obliged under the FOISA or the Environmental Information (Scotland) Regulations to disclose Information:
 - (a) without consulting with FSWCA; or
 - (b) following consultation with FSWCA and having taken its views into account,

provided always that where clause 25.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give FSWCA advanced notice, or failing that, to draw the disclosure to FSWCA's attention after any such disclosure.
- 25.6 FSWCA shall ensure that all Information produced in the course of this Agreement or relating to this Agreement and held on behalf of the Council is retained during the Term for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 25.7 FSWCA acknowledges that any lists or schedules provided by it outlining Confidential Information and/or Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26. DATA PROTECTION

- 26.1 FSWCA shall (and shall procure that any of its Personnel involved in the performance of this Agreement shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with this Agreement.
- 26.2 Notwithstanding the general obligation in clause 26.1, where FSWCA is processing Personal Data as a Data Processor for the Council, FSWCA shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) shall act only on instructions from the Council in relation to its processing of the Personal Data;
 - (b) shall process the Personal Data exclusively for the purposes of providing the Services to the Council and shall not share the Personal Data with third parties other than its Sub-Contractors;
 - (c) shall not transfer Personal Data to countries outside the European Economic Area;
 - (d) shall assist (as soon as reasonably practicable) with any reasonable request by the Council to provide such information as is necessary to enable the Council to comply with any data subject access request received by the Council, and FSWCA shall use its reasonable endeavours, in any event, to provide the Council with such information within five (5) Working Days of the date of the Council's request;
 - (e) agrees that, on termination of this Agreement, howsoever arising, all Personal Data in the possession or control of FSWCA shall, at the request of the Council be returned to the Council or destroyed by FSWCA and at the request of the Council, FSWCA will provide written confirmation that this has been done;
 - (f) provide the Council with such information as the Council may reasonably require to satisfy itself that FSWCA is complying with its obligations as data processor under this clause 26.2;
 - (g) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 26.2; and
 - (h) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

27. CONFIDENTIALITY

- 27.1 Subject to clause 27.2 and Clause 25 (Freedom of Information), the parties shall keep confidential all Confidential Information of the other party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any of the other party's Confidential Information.
- 27.2 Without prejudice to the foregoing generality, the Council shall:
- (a) Use FSWCA's Confidential Information solely for the purposes of fulfilling its obligations under this Agreement.
 - (b) Keep FSWCA's Confidential Information secure and take no lesser security measures and degree of care to protect FSWCA's Confidential Information that the Council applies to its own confidential or proprietary information; and
 - (c) not disclose FSWCA's Confidential Information to any third party except with the prior written consent of FSWCA or in accordance with this clause 27.
- 27.3 Notwithstanding the foregoing, the Council may disclose FSWCA's Confidential Information to its directors and employees and any sub-contractor, delegate or professional adviser who is directly involved in and needs to know such Confidential Information for the purposes of, the provision or receipt of the Services under this Agreement.
- 27.4 The Council shall ensure that its directors, employees, sub-contractors, delegates and professional advisers are aware of the confidential nature of the information and shall impose upon them, and procure compliance with, confidentiality obligations which are substantially the same as those which are set out in this Agreement.
- 27.5 Clause 27.1 shall not apply to any disclosure of information:
- (a) required by Regulatory Body or any Applicable Law, provided that clause 25.1 (Freedom of Information) shall apply to any disclosures required under the FOISA or the Environment Information (Scotland) Regulations.
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement; including, in the case of FSWCA, its Sub-Contractors.
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1.

- (d) by either party of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 19.3 (Dispute Resolution).
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.
- (g) by the Council to any other department, office or agency of the Government provided that the Council shall ensure other department, office or agency of the Government are aware of the confidential nature of the information and shall impose upon them, and procure compliance with, confidentiality obligations which are substantially the same as those which are set out in this Agreement; or
- (h) by either party relating to this Agreement and in respect of which the other party has given its prior written consent to disclosure.

27.6 On or before the termination of this Agreement FSWCA shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

28. AUDIT

28.1 During the Term, the Council may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of the Project (and proposed or actual variations to it in accordance with this Agreement).
- (b) to review the integrity, confidentiality and security of any data relating to the Council.
- (c) to review FSWCA's compliance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services.
- (d) to review any records created during and related to the provision of the Services.
- (e) to review any books of account kept by FSWCA in connection with the provision of the Services.
- (f) to carry out the audit and certification of the Council's accounts.
- (g) to carry out an examination of the economy, efficiency and effectiveness with which the Council has used its resources.

- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.
- 28.2 Except where an audit is imposed on the Council by a Regulatory Body, or where the Council, acting reasonably, believes that FSWCA is in default or breach of this Agreement, the Council may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt FSWCA or delay the provision of the Services.
- 28.4 Subject to the Council's obligations of confidentiality, FSWCA shall on demand provide the Council and any Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit.
 - (b) reasonable access to any sites controlled by FSWCA and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to FSWCA's Personnel.
- 28.5 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.
- 28.6 The parties agree that the Council shall bear any significant costs and expenses incurred in respect of compliance with the FSWCA's obligations under this clause unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by FSWCA in which case FSWCA shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that FSWCA has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If FSWCA's failure relates to a failure to provide any information to the Council about the Project or FSWCA's costs, then the remedial plan shall include a requirement for the provision of all such information.

29. INTELLECTUAL PROPERTY

- 29.1 The Council acknowledges and agrees that all Intellectual Property in and relating to the Solar PV System shall, as between the parties, vest in FSWCA.

- 29.2 All Intellectual Property jointly created by the parties in the course of performing the Services shall vest equally in both parties.
- 29.3 All Intellectual Property created individually by either party during Term shall vest with the party creating the Intellectual Property.
- 29.4 FSWCA hereby grants to the Council a perpetual, non-transferable, sub-licensable, royalty free licence to all Intellectual Property owned by or licensed to FSWCA to the extent necessary for the receipt by the Council of the Services and the use of the Solar PV System in relation to the Relevant Buildings in accordance with this Agreement.
- 29.5 The Council hereby grants to FSWCA and its Sub-Contractors a perpetual, non-transferable, sub-licensable, royalty free licence to all Intellectual Property owned by or licensed to the Council to the extent necessary for the provision by FSWCA of the Services and the installation, support, maintenance and removal of the Solar PV System in relation to the Relevant Buildings in accordance with this Agreement.
- 29.6 FSWCA shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the use, supply or availability of the Services, or by the use of the Intellectual Property referred to in clause 29.4 except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 29.7 The Council shall indemnify FSWCA against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the unauthorised use, supply or availability of the Services, or by the use of the Intellectual Property referred to in clause 29.4, except to the extent that they have been caused by or contributed to by FSWCA's acts or omissions.
- 29.8 Each party shall do all such acts as the other party requires to give it the benefit of this clause 29.

TERMINATION

30. TERMINATION FOR BREACH

- 30.1 The Council may terminate this Agreement in whole or part with immediate effect by the service of written notice on FSWCA in the following circumstances:

- (a) if FSWCA is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Council may only terminate this Agreement under this clause 30.1 if FSWCA has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so; or
- (b) if the Council demolish any Relevant Building or fail to obtain the consent of any new owner of any Relevant Building to the installation of the Solar PV System or cannot identify a suitable alternative building; or
- (c) if, in the opinion of the Council, acting reasonably, the Community Benefit Fund is poorly administered (for example in a manner contrary to the objectives of FSWCA); or
- (d) if, FSWCA is not generating and supplying the Relevant Building(s) with electricity within two years of the signing of this Agreement. Declaring for the avoidance of doubt that termination will only apply to the Relevant Building(s) which is/are not generating or supplying electricity and the Relevant Building(s) shall no longer form part of the Agreement; or
- (e) where FSWCA is an individual, if a petition is presented for FSWCA's bankruptcy or the sequestration of FSWCA's estate or a criminal bankruptcy order is made against FSWCA, or FSWCA is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage FSWCA's affairs; or
- (f) where FSWCA is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (g) or h) of this clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for FSWCA to be wound up as an unregistered company; or
- (g) where FSWCA is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

30.2 FSWCA may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Council in the following circumstances:

- (a) if the Council is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, FSWCA

may only terminate this Agreement under this clause 30.2(a) if the Council has failed to remedy such breach within 28 days of receipt of notice from FSWCA (a **Remediation Notice**) to do so; or

- (b) if, in the opinion of FSWCA, acting reasonably, the Project ceases to be financially viable (financially viable meaning that FSWCA fails or will fail to make its projected return on its investments to the benefit of the community) for FSWCA, including, without limitation because the number of Relevant Buildings forming an active part of the Project falls below a level acceptable to FSWCA.

30.3 Either party may also terminate this Agreement in accordance with the provisions of clause 31 (Force Majeure).

30.4 The Council may also terminate this Agreement in accordance with the provisions of clause 32 (Prevention of Corruption).

31. FORCE MAJEURE

31.1 Subject to the remaining provisions of this clause 31, neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

31.2 If either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration.
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's willful act, neglect, or failure to take reasonable precautions against the relevant Force Majeure Event.

31.4 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where FSWCA is the affected party, it shall take and/or procure the taking of all steps to

overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.

- 31.5 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise in writing by the parties.
- 31.6 The party not affected by the Force Majeure Event may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Project and which continues for more than fifty (50) Working Days.

32. PREVENTION OF CORRUPTION

- 32.1 FSWCA:
- (a) shall not and shall procure that all of its Personnel shall not, in connection with this Agreement commit a Prohibited Act.
 - (b) warrants, represents, and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 32.2 FSWCA shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in connection with this Agreement for the purpose of compliance with the Bribery Act.
- 32.3 If FSWCA notifies the Council that it suspects or knows that there may be a breach of clause 32.1, FSWCA must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation in accordance with clause 28 (Audit).
- 32.4 The Council may terminate this Agreement by written notice with immediate effect if FSWCA, or its Personnel (in all cases whether or not acting with FSWCA's knowledge) breaches clause 32.1. In determining whether to exercise the right of termination under this clause 32.4 the Council shall give all due consideration, where appropriate, to action other than termination of

this Agreement unless the prohibited act is committed by FSWCA or a senior officer of FSWCA or by an employee, Sub-Contractor or supplier not acting independently of FSWCA. The expression "not acting independently of" (when used in relation to FSWCA or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Council; or,
- (b) with the actual knowledge;

of any one or more of the directors of FSWCA or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of FSWCA ought reasonably to have had knowledge.

32.5 Any notice of termination under clause 32.4 must specify:

- (a) the nature of the prohibited act;
- (b) the identity of the party whom the Council believes has committed the prohibited act; and
- (c) the date on which this Agreement will terminate.

32.6 Despite clause 19 (Dispute resolution), any dispute relating to:

- (a) the interpretation of this clause 32; or
- (b) the amount or value of any gift, consideration, or commission,

shall be determined by the Council and its decision shall be final and conclusive.

32.7 Any termination under clause 32.4 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

33. CONSEQUENCES OF TERMINATION

33.1 On termination of this Agreement FSWCA shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Project), shall be delivered to the Council forthwith; provided always that FSWCA shall be entitled to retain one copy for record keeping purposes and copies previously backed up for disaster recovery purposes.

33.2 On termination of this Agreement, in accordance with clause 18 (Term and Transfer of Ownership of the Solar PV System) the Council will have the option of asking FSWCA to either (1) remove the Solar PV System and all

relevant infrastructure at its own expense or (2) transfer ownership of the Solar PV System and all relevant infrastructure to the Council.

- 33.3 In the event this Agreement is terminated (whether in whole or in part) in accordance with clause 30.2 (a) (Termination for Breach), FSWCA shall be entitled to Compensation from the Council.
- 33.4 Expiry or termination of this Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at expiry or termination or the continuation of any provision expressly stated to survive, or implicitly surviving, expiry or termination.
- 33.5 Without prejudice to the foregoing generality, clauses 18 (Term and Transfer of Ownership of the Solar PV System), 19 (Dispute Resolution), 21 (Warranties), 22 (Limitations and Exclusions), 23 (Indemnities), 27 (Confidentiality), 28 (Audit), 33 (Consequences of Termination), 34 (Waiver), 35 (Cumulation of Remedies), 39 (Notices) and 41.1 (Governing Law and Jurisdiction) and Part 1 of the Schedule (Definitions and Interpretation), shall survive termination or expiry of this Agreement and continue in full force and effect.

GENERAL PROVISIONS

34. WAIVER

No failure or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to FSWCA in respect of the Project or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve FSWCA of its obligations to deliver the Project in accordance with the provisions of this Agreement.

35. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement or existing in law.

36. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Council and FSWCA shall immediately commence good faith negotiations to remedy that invalidity.

37. PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

38. PUBLICITY

FSWCA shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

39. NOTICES

39.1 Any notice, demand or communication in connection with this Agreement shall be in writing, marked for the attention of the Service Lead, Asset Management & Community Asset Transfer (in the case of the Council) or Secretary (in the case of FSWCA) and delivered personally or sent by pre-paid first class post to the recipient's address as set out at the beginning of this Agreement or to any other address which the recipient has notified in writing to the sender prior to dispatch.

39.2 The notice, demand or communication is deemed given:

- (a) if delivered personally, at the time of delivery to the address provided for in this Agreement; or
- (b) if sent by pre-paid first-class post, on the second Working Day after posting it;

provided that, if it is delivered personally on a day which is not a Working Day or after 4pm on any Working Day, it shall instead be deemed to have been given or made on the next Working Day.

40. ENTIRE AGREEMENT

- 40.1 This Agreement and any documents referred to in this Agreement contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 40.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to it for breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.
- 40.3 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 40.4 In the event of and only to the extent of any conflict between the terms and conditions of this Agreement (including the Schedule) and other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of preference:
- (1) the main body of this Agreement.
 - (2) Part 1 of the Schedule (Definitions and Interpretation).
 - (3) Part 8 of the Schedule (The Licence).
 - (4) any other Part of the Schedule; and
 - (5) any other document referred to in this Agreement.

41. RIGHTS OF THIRD PARTIES

- 41.1 No term of this Agreement shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

42. GOVERNING LAW AND JURISDICTION

42.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with Scots Law and, subject to clause 19 (Dispute Resolution) subject to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement comprising of this page and the 30 preceding pages together with the Schedule in 9 Parts annexed hereto has been executed in counterparts and in duplicate as follows:-

**FOR AND ON BEHALF OF
SOUTH AYRSHIRE COUNCIL**

..... Witness

at Full Name

on January 2025 Address

by

..... Proper Officer
/ Authorised Signatory

..... Full Name

before the witness set out opposite:-

**FOR AND ON BEHALF OF
FORT, SEAFIELD & WALLACETOWN COMMUNITY ASSOCIATION**

.....Witness

on January 2025 by Full Name

..... Director Address

..... Full Name

..... Director

..... Full Name

before the witness set out opposite:-

This is Part 1 of the Schedule referred to in the foregoing Agreement

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Part 1 of the Schedule apply in this Agreement.

Agreement: this Agreement together with the Schedule (as may be amended or updated from time to time).

Applicable Laws: any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

Authorised Representatives: The persons respectively designated as such by the Council and FSWCA, the first such persons being set out in Part 3 of the Schedule (Contract Management).

Bribery Act: The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Code: The Scottish Ministers' Code of Practice on the Discharge of the Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

Commercially Sensitive Information: the information of a commercially sensitive nature relating to FSWCA, its intellectual property rights or its business or which FSWCA has indicated to the Council that, if disclosed by the Council, would cause FSWCA significant commercial disadvantage or material financial loss including, without limitation, the information set out in Part 8 of the Schedule.

Community Benefit Fund: the fund generated out of profit from the sale of electricity to the Council and export to the grid less the operational costs of FSWCA.

Compensation: the amount, to be agreed by the parties, paid by the Council to FSWCA in the event of termination under clause 30.2 (a) of this Agreement.

Confidential Information: all confidential information (however recorded, preserved or disclosed) disclosed by a party to the other whether before or after the date of this Agreement, which is designated orally or in writing as confidential or which ought reasonably to be considered as confidential and which relates to a party's business including the business, affairs, customers, clients, suppliers, processes, plans or intentions, developments, trade secrets, personnel of the disclosing party and all information derived from any of the above.

Council's Premises: the buildings (including all required access for install and maintenance of solar panels and equipment) identified in the Licence and which are to be made available for use by FSWCA for the provision of the Project on the terms set out in this Agreement.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 2018 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), the Employment Regulations 1999 Act (Blacklists) Regulations 2010 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Depreciated Value: the depreciated value of the Solar PV System as shown in the books of FSWCA after applying the depreciation policies of FSWCA which starts in the year after the year the solar panels are installed and are straight line depreciation over the remaining years of the 25-year period of the Licence.

Dispute Resolution Procedure: the procedure set out in clause 19.

Distribution Network Operator: the organisation responsible for connections to the low voltage electricity distribution network which will take the power from the solar panels on the Solar PV System.

FSWCA Works: means all works carried out by FSWCA (and their contractors) including the Solar PV Attachment Works and the Solar PV Ancillary Works.

Educational Package: the educational package likely to include 'mimic board' monitors, other educational materials and activities in the location specified by the manager of the Relevant Building.

Electricity Network: an electricity distribution system or transmission system regulated by OFGEM or their statutory successor.

Emergency: any occasion or circumstance where at any Relevant Building there is or can reasonably be expected to be an immediate danger or risk to the health and safety of members of the public and/or to the health and safety

of occupiers of the Relevant Building and / or to the Solar PV System or any part or parts of it and / or an immediate danger or risk of material damage occurring to the Relevant Building or to any nearby building or structure.

Environmental Information (Scotland) Regulations: The Environmental Information (Scotland) Regulations 2004 (SI 2004/520) together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such regulations.

Equipment: those parts of the Solar PV System other than the solar panels, including wiring, inverters, meters, connections and other associated equipment installed as part of this project to a Relevant Building's electricity supply as described in the Specification.

Export Meter: the meter and equipment for measuring electricity exported to the Electricity Network by the Solar PV System.

Export Payments: payments made for electricity generated by the Solar PV System which is exported or deemed to be exported to the Electricity Network.

Financial Year: the financial year of FSWCA ending on 31 August in each year.

FOISA: the Freedom of Information (Scotland) Act 2002, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to FSWCA, FSWCA's Personnel or any other failure in FSWCA's supply chain except where such cause is itself beyond the reasonable control of FSWCA's supplier or sub-contractor.

Generation Meter: installed device to record electricity generated by the Solar PV systems which data will be used to calculate payments due from the Council and PPA

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company following commonly accepted practices within the relevant industry or business sector.

Grant: the grant of the rights as set out in the Licence

Grant Funding: a sum of money awarded from or paid to either party to the agreement.

Information: has the meaning given under section 73 of FOISA.

Installer: the contractor which will design and install solar panels on the Relevant Buildings on behalf of FSWCA.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Licence: the rights and obligations relating to the affixing, maintenance, upgrading and repair of a Solar PV System together with all necessary rights of access in respect of the Project between the Council and FSWCA as set out in Part 8 of the Schedule.

Management Reports: the reports to be prepared and presented by FSWCA in accordance with clause 15 (Reporting and Meetings).

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

OFGEM: the Office of Gas and Electricity Markets, the organisation which regulates the gas and electricity markets in Great Britain.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Personnel: FSWCA, its employees, staff, other workers, agents, consultants, Contractors, Sub-Contractors and volunteers who are engaged in delivering the Project.

Power Quality: variations in voltage magnitude, transient voltages and currents and harmonic content in the waveforms of AC power.

PPA: A power purchase agreement between the Council and FSWCA or FSWCA and an electricity supply company, for the generation and purchase of electricity.

PPA Payments: the payments due under the PPA(s) from generation of electricity by the Solar PV System.

Profit: the surplus cash generated by FSWCA after operating costs paid to the Community Benefit Fund which benefits the local community in accordance with Part 7 of the Schedule (Financial Provisions).

Prohibited Act: committing any offence under the Bribery Act and under legislation creating offences concerning fraudulent acts.

Project: the installation, operation, maintenance and monitoring of the Solar PV System by FSWCA at the Relevant Buildings.

Regulated Work: in relation to children shall have the same meaning as set out in Part 1 of Schedule 2 to the Safeguarding Vulnerable Groups (Scotland) Act 2007.

Regulatory Body: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly.

Relevant Building: means any or each of the properties identified in Part 2 of the Schedule (Relevant Buildings) or such of them as are found suitable pursuant to paragraph 2.1.1 of the Licence, or any building or buildings substituted therefor during the Term in terms of this Agreement.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by either party in accordance with clause 30 (Termination for Breach).

Repairs Notice: a written notice from the Council to FSWCA specifying:

- (a) the anticipated commencement date for Repair Works;
- (b) the anticipated completion date for Repair Works;
- (c) the nature and extent of Repair Works; and
- (d) those parts of the Solar PV System which, in the reasonable opinion of the Council, are required to be temporarily removed, to enable Repair Works to be effected.

Repair Works: any works of inspection, maintenance, installation, construction, re-routing, replacement, repair or redecoration intended to be carried out to the Relevant Building by the Council which reasonably requires the temporary removal of the Solar PV System to enable such works to be carried out.

Redevelopment Notice: a written notice specifying:

- (a) the anticipated commencement date for the Redevelopment Works provided always that this shall be not less than three (3) months after the date on which the notice is served; and
- (b) the nature and extent of Redevelopment Works.

Redevelopment Works: works by the Council to reconstruct, demolish or undertake major works which reasonably require the removal of the Solar PV System from the Relevant Building.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Council internally or by any Replacement Service Provider.

Replacement Service Provider: any third-party supplier of Replacement Services appointed by the Council from time to time.

Request for Information: a request for information under the FOISA or the Environmental Information (Scotland) Regulations.

Schedule: the schedule annexed to and forming part of this Agreement.

Services: the services to be delivered by or on behalf of FSWCA under this Agreement, as more particularly described in the Service Levels.

Service Levels: the service levels as set out in Part 6 of the Schedule (Service Levels).

Solar PV System: the solar photovoltaic electricity generating system constructed or to be constructed by FSWCA and to be installed on the Relevant Buildings by FSWCA in accordance with the Specification and of such type, size and construction as complies with all Necessary Consents obtained by FSWCA, including all its component parts (such as bases and associated inverters, modules, transformers, control and metering equipment, switches and fuses) and which may comprise several independent systems capable of generating and exporting electricity independently located on different buildings; and if an independent system is installed, being part only of the system described in the Specification, then "Solar PV System" means that independent system installed.

Specification: the technical specification as prepared by FSWCA for the Project including all technical aspects of the Solar PV System Works (such as detailed drawings or structural surveys for roof space for each Relevant Building) (as the same may be updated by FSWCA from time to time), a copy of which shall be made available to the Council.

Solar PV System Ancillary Works: all works necessary to inspect, use, maintain, repair, alter, protect, enlarge, renew, reinstate, replace, remove or dismantle the Solar PV System from time to time.

Solar PV System Attachment Works: all works necessary for the attachment of the Solar PV System to the Relevant Building.

Sub-Contract: any contract between FSWCA and a third party pursuant to which FSWCA agrees to source the provision/installation of any of the Services from that third party.

Sub-Contractor: the contractors that enter into a Sub-Contract with FSWCA.

Term: a period of 25 years from the date of signing of this Agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by The Collective Redundancies and Transfer

of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (CRATUPEAR) and as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Working Day: any day other than a Saturday or Sunday on which the Scottish clearing banks are open for business.

VAT: value added tax.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee.
- 1.4 The schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedule.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied, assigned or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses, parts and the schedule are to the clauses, schedule parts and the schedule of this Agreement; references to paragraphs are to paragraphs of the schedule.
- 1.11 The words **include** or **including** are to be construed as meaning without limitation.

Part 2

Relevant Buildings

This is Part 2 of the Schedule referred to in the foregoing Agreement

1. Newton Primary School. Russell Drive, Ayr, KA8 8JL (Grid Ref: NS341225).
2. St John's Primary School. Whitletts Road, Wallacetown, KA8 OJB (Grid Ref: NS344222).
3. Wallacetown Early Years Centre, Queen Street, Ayr, KA8 ODW (Grid Ref: NS343222)

The foregoing list does not necessarily represent the final list of buildings to be included in the Project. If, on further investigation, any named property is not deemed appropriate for inclusion in the Project by either party or if another property entirely is so deemed, then each party shall work together to identify a suitable substitute or agree on the Council property for inclusion.

This is the Part 3 of the Schedule referred to in the foregoing Agreement

1. AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative: Colin Love (colin.love@south-ayrshire.gov.uk)

1.2 FSWCA's initial Authorised Representative:

Alan Roseweir (jojam118@aol.com)

John Allan (jmabusinessconsultants@gmail.com)

2. KEY PERSONNEL

2.1 Alan Roseweir. Chairman, FSWCA

2.2 John Allan. Vice Chairman, FSWCA

3. MEETINGS

3.1 Type FSWCA Board of Trustee Meetings

3.2 Quorum The quorum necessary for the transaction of business at a meeting of the Board of Trustees shall be 50% of the Trustees or 4 Trustees, whichever is the greater and shall include those Trustees not present in person, providing always that Trustees elected by and from the Association Members are in the majority. If at any time the total number of Trustees in office is less than the quorum required, the Trustees are unable to take any decisions other than to appoint further Trustees or to call a general meeting so as to enable the Members to appoint further Trustees.

3.3 Frequency Bi-monthly or in line with the constitution of the FSWCA at the relevant time

3.4 Agenda To be advised ahead of each meeting

4. REPORTS

4.1 Type (including financial) / Contents

(a) Monthly output report – stating the total output per site

(b) Quarterly Management Accounts – including the profit & loss

(c) Year End Financial Accounts – Full accounts

4.2 Frequency See above.

4.3 Circulation list Reports will be sent to FSWCA Board members.

This is Part 4 of the Schedule referred to in the foregoing Agreement**1. DEFINITIONS**

The definitions in this paragraph apply in this schedule:

Effective Date: the date or dates on which the Services (or any part of the Services) transfer from the Council or any Third Party Employer to FSWCA or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to FSWCA or Sub-contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against FSWCA arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for unpaid salary, redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, claims in respect of pension rights, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any

investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and reasonable legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE.

Service Provider's Final Staff List: the list of all FSWCA's and Sub-Contractors' Personnel employed or engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by FSWCA of all FSWCA's and Sub-Contractors' Personnel employed or engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from FSWCA or Sub-contractor to the Council or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on FSWCA's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the Personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to FSWCA or Sub-contractor by virtue of the application of TUPE.

Third Party Employer: a service provider engaged by the Council to provide any of the Services to the Council and whose employees will transfer to FSWCA on the Effective Date.

Transferring Employees: employees of the Council or any of their sub-contractors whose contracts of employment transfer with effect from the Effective Date to FSWCA or Sub-Contractor by virtue of the application of TUPE.

2. COMMENCEMENT OF SERVICES

- 2.1 The Council and FSWCA agree that TUPE is unlikely to apply upon commencement of the provision of the Services under this Agreement. In the event that TUPE does apply:

- (a) The Council shall be responsible for all remuneration, benefits, entitlements and outgoings payable in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date;
- (b) the Council shall indemnify FSWCA or Sub-Contractor in full or against all Employment Liabilities or anything done or omitted to be done in respect of the Transferring Employees prior to the Effective Date;
- c) If any person who is not a Transferring Employee claims or alleges that their employment has transferred to FSWCA or Sub-Contractor under or would have so transferred had they not resigned, then FSWCA or Sub-Contractor shall be entitled to terminate such actual or alleged employment and, provided that such termination takes effect within 2 months of such allegation, the Council shall indemnify FSWCA or Sub-Contractor (as appropriate) in respect of all Employment Liabilities relating to such person's employment, engagement and/or its termination;
- (d) The Council will provide such reasonable assistance, information and documentation in relation to any Transferring Employee or any person who claims that their employment should have transferred to FSWCA or Sub-Contractor as required by FSWCA or Sub-Contractor.

Provided that the above indemnities shall not cover any act or omission of FSWCA or Sub-Contractor.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) and this may result in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 FSWCA or Sub-Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings payable in respect of the employees engaged in providing the Services from the Effective Date to the date of any Subsequent Transfer, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise.
- 3.3 FSWCA shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement Lease or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by FSWCA or any Sub-Contractor in the provision of the Services, FSWCA's Provisional Staff List and the Staffing Information together with any additional information requested, including information as to the application of TUPE to the employees. FSWCA shall notify the Council of any material changes to this information as and when they occur. FSWCA agrees that, in preparing its Provisional Staff List it will consult with and take into account any information provided by the Council in respect of the designation of such staff.
- 3.4 From the earliest of (i) the date on which notice of early termination of this Agreement (or part of the Services under this Agreement) has been given; and (ii) the date which is 12 months prior to the end of the Term, FSWCA will not (and will procure that its Sub-Contractors will not), without the prior written consent of the Council:
- (a) assign any person to the provision of the Services (or the relevant part) which is the subject of a Subsequent Transfer who is not listed in FSWCA's Provisional Staff List;
 - (b) increase the total number of employees on FSWCA's Provisional Staff List, save for fulfilling assignments and projects previously scheduled and agreed;
 - (c) replace or dismiss or give notice to dismiss any person listed on FSWCA's Provisional Staff List or deploy any other person to perform the Services (or the relevant part), save for fulfilling assignments and

- projects previously scheduled and agreed and/or replacing voluntary resignations or staff terminated by due disciplinary process to satisfy previously agreed work streams, provided that any replacement is employed or engaged on the same terms and conditions as the person he/she replaces;
- (d) make, propose or permit any material changes to terms and conditions of those listed on FSWCA's Provisional Staff List or introduce any new contractual or customary practices concerning lump sum or termination payments to any such person or group of persons;
 - (e) increase the proportion of working time spent on the Services (or the relevant part) by any person listed on FSWCA's Provisional Staff List.
- 3.5 At least 28 days prior to the Service Transfer Date, FSWCA shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, FSWCA's Final Staff List, which shall be complete and accurate in all material respects. FSWCA's Final Staff List shall identify which of FSWCA's and Sub-Contractor's Personnel named are Relevant Employees.
- 3.6 FSWCA warrants to the Council and the Replacement Service Provider that FSWCA's Provisional Staff List, FSWCA's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on FSWCA's Final Staff List.
- 3.7 FSWCA shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to full or partial expiry or termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. FSWCA shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 Within seven Working Days after a Subsequent Transfer, FSWCA will provide to the Council, or relevant Replacement Service Provider, in respect of each person on FSWCA's Final Staff List (and/or any other person whose employment transfers or is alleged to transfer to the Council or Replacement Service Provider: the most recent month's copy payslip data, details of cumulative pay for tax and pension purposes, details of cumulative tax paid,

tax code, details of any voluntary deductions from pay, and bank/building society account details for payroll purposes.

- 3.10 FSWCA shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all Employment Liabilities relating to any claim by or on behalf of any person listed on FSWCA's Final List and/or any other person whose employment or engagement transfers or is claimed to transfer to the Council and/or a Replacement Service Provider (or whose employment is claimed would have so transferred had he not resigned) arising from or connected with
- (a) the actual or claimed employment or engagement of such person or the actual or claimed termination of such employment or engagement prior to the Service Transfer Date
 - (b) any failure by FSWCA and/or any Sub-Contractor to comply with any legal obligation under TUPE, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 If any person not referred to in FSWCA's Final Staff List claims or alleges that their employment has transferred to the Council or any Replacement Service Provider under TUPE or otherwise as a result of a Subsequent Transfer, or would have so transferred had he not resigned, then the Council or Replacement Service Provider shall be entitled to terminate such actual or alleged employment and, provided that such termination takes effect within 2 months of such allegation, FSWCA shall indemnify the Council and/or the Replacement Service Provider (as appropriate) in respect of all Employment Liabilities relating to such person's employment, engagement and/or its termination.
- 3.12 FSWCA shall, if so requested by the Council, enter into an appropriate deed of indemnity with any Replacement Service Provider on the same terms as appear in paragraphs 3.9 and 3.11 and shall indemnify the Council in respect of any liabilities arising from a failure to do so, including as a result of any liabilities which arise under any back-to-back indemnity provided by the Council to any Replacement Service Provider.
- 3.13 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.14 It is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. PENSIONS

4.1 FSWCA shall and shall procure that any relevant Sub-Contractor shall offer any employees engaged in the provision of the Services and who are not Transferring Employees with access to a defined contribution Registered Pension Scheme (having the meaning given to that term by Section 150(2) of the Finance Act 2004) in respect of which the employer must match employee contributions up to at least 6% of remuneration.

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Part 5

Insurance

This is Part 5 of the Schedule referred to in the foregoing Agreement

The following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 or such higher amount as may be in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims.

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This is Part 6 of the Schedule referred to in the foregoing Agreement

Service Levels

1. Introduction
2. The Services to be provided
3. Intended Community Benefits
4. FSWCA's obligations
5. Monitoring
6. Payment

1. Introduction

- 1.1. The purpose of the Service Levels is to document the intended service and community benefits to be provided by FSWCA to the residents of South Ayrshire and the Council.
- 1.2. The Service Levels will be reviewed annually.

2. The Services to be provided

- 2.1. FSWCA will:
 - 2.1.1. supply the Council/Relevant Buildings with electricity generated by the Solar PV System which will be located on the roof of each Relevant Building; and
 - 2.1.2. provide and maintain display screens detailing current and total solar PV panel output, in a main circulation area of each Relevant Building.

3. Intended Community Benefits

- 3.1. FSWCA shall create and administer a Community Benefit Fund from the Profits received in selling generated/exported electricity from the Relevant Buildings in line with the PPA.
- 3.2. The surplus profit generated and apportioned to the Community Benefit Fund will be available to FSWCA and any qualifying community organization, operating within Wallacetown, which applies successfully with a project that meets the objectives of FSWCA.
- 3.3. In parallel with the establishment of the Community Benefit Fund, FWSCA will allocate a proportion of surplus profits to establish a Repairs & Contingencies Fund to meet unforeseen expenses related to the running of the project, maintenance of the installed systems and any damage to the Relevant Buildings caused by the project's operation.

- 3.4. The allocation of monies from the Community Benefit Fund shall be determined by FSWCA who will, in principle, favour applications which will have the greatest carbon savings and beneficial impact amongst residents of Wallacetown including to: alleviate fuel poverty, encourage behaviour change relating to carbon reduction, STEM learning opportunities or other relevant community benefit that meets the objectives of FSWCA, and which can show high levels of community support for their application.
- 3.5. FSWCA will continue to work with each Relevant Building for the duration of this Agreement subject to, and in accordance with, FSWCA's principle of allocation. Applications for qualifying activity delivered in the Relevant Buildings will be assessed on the same basis as any other qualifying application.
- 3.6. The Community Benefit Fund will be managed effectively by the FSWCA Board. Where appropriate, the Board may delegate the evaluation of grant applications to a Community Benefit Panel of representatives from the community, Council and other relevant agencies. This Panel would meet periodically throughout each calendar year and make recommendations to FSWCA's Board on which applications should be funded. During each FSWCA Board meeting, any applications received since the last meeting will be reviewed and a decision made on which projects will receive money from the Community Benefit Fund. The FSWCA Board will promote the Community Benefit Fund across key 3rd sector networks to ensure that eligible organisations know of its existence.
- 3.7. The Community Benefit Fund will endeavour to provide educational opportunities on energy issues, fuel poverty and wider sustainability issues to Relevant Buildings and associated communities according to the objectives of FSWCA.
- 3.8. FSWCA will endeavour to provide support and guidance to other community led energy reduction projects and will work with other delivery agencies as necessary.
- 3.9. FSWCA will endeavour carry out activities that contribute towards the reduction of fuel poverty in South Ayrshire.

4. FSWCA's obligations

- 4.1. FSWCA shall align its Rules so that the Council shall be entitled to appoint up to three Representatives onto the Community Benefit Panel (as described at 3.5 above).
- 4.2. FSWCA will work towards having a gender balanced Board of Trustees as the existing Board members step down and seats come up for election at each FSWCA AGM.

- 4.3. All FSWCA personnel/volunteers undertaking educational activities at any of the Relevant Buildings will require to comply with the staff vetting procedures detailed in Clause 9 (Staff vetting) of this Contract.
- 4.4. FSWCA will maintain sufficient process and procedures to ensure that all applications and decisions relating to the Community Benefit Fund are dealt with equitably and transparently and in line with the agreed funding criteria.
- 4.5. FSWCA will work with neighbourhood partnerships and other stakeholders within the Council to help meet agreed energy, sustainability and fuel poverty objectives.
- 4.6. FSWCA will maintain inverters in the PV Solar System installed at Relevant Buildings in good working order (and, in doing so will, where necessary, replace inverters) for the Term with an anticipated lifespan beyond the Term.
- 4.7. FSWCA shall use its reasonable endeavours to ensure that the maximum output of the Solar PV System is maintained throughout this Contract including the timeous replacement of any failed components.
- 4.8. FSWCA will enter into discussions with the Council if, on commencement of works to install the PV systems, the roof of any Relevant Building is found to require significant repairs, with a view to agreeing a contribution from the project towards the cost of those repairs. That contribution may be through a direct payment(s) towards the cost or through an improved reduction in the rate paid by the Council for electricity consumed in the Relevant Buildings. These contributions, where necessary could be spread over several years. This clause 4.8 only applies to unforeseen repairs which only become apparent at the installation phase.

5. Monitoring

- 5.1. FSWCA shall monitor and report on energy production and onsite use in respect of the Relevant Buildings on an annual/6month/3month cycle at the same time that it issues invoices to the Council for electricity consumed or deemed to be consumed in accordance with Part 7 of the Schedule (Financial Provisions)
- 5.2. FSWCA shall monitor and report on Community Benefit Fund applications and awards by written report that will also be made available to FSWCA members at its AGM.
- 5.3. FSWCA shall provide half hourly generation figures for each solar panel installation and details on the amount of electricity exported from the Solar PV System. Half hourly generation figures will be provided on regular basis via an appropriate file transfer protocol or other such arrangement to be agreed.
- 5.4. Monitoring will be carried out in accordance with Clause 12 (Monitoring) of this Contract.

This is Part 7 of the Schedule referred to in the foregoing Agreement.

1. METER READINGS

- 1.1. Meters will be read as required by the PPA and not less than quarterly and at the end of each Financial Year.
- 1.2. At any reasonable time with prior written agreement with the Council, the Council shall permit FSWCA and any other appropriate party with a reasonable interest in inspecting them (including representatives of the Electricity Network and persons to whom FSWCA has sold, or is selling, or is proposing to sell electricity), to have access to the Meters for the purpose of reading and checking them and to have access to the Solar PV System.
- 1.3. The Council shall ensure that the Generation Meter and the Export Meter are accessible at reasonable written notice.

2. SALE OF ELECTRICITY

- 2.1. The Council will provide the roof space of the Relevant Buildings to FSWCA rent free.
- 2.2. In consideration of, and subject to, the Council providing the roof space to the Relevant Buildings to FSWCA rent free, FSWCA shall charge for electricity delivered to the Relevant Buildings included in the scheme at Market Rate available to the Council minus 10% with the rate to be agreed annually between the parties unless a change to this has been agreed by the Council as the result of a Compensation event. At time of signing, Market Rate is that available to the Council through the National Framework negotiated collectively by Scottish Procurement on behalf of Scottish Public Bodies.
- 2.3. FSWCA shall sell any electricity generated by the Solar PV System which is exported, or which is deemed by FSWCA to be exported to an electricity distribution or transmission system regulated by OFGEM. Where the electricity generated by the Solar PV System cannot be satisfactorily metered, both parties shall cooperate and agree on a metering solution even if this is not a supplier installed meter. FSWCA shall be entitled to the Export Payment.
- 2.4. The Relevant Buildings shall be deemed to consume any electricity generated by the Solar PV System which is not exported. The amount consumed is agreed by the parties to be the difference between the electricity shown to be generated by the Generation Meter and the electricity shown to be exported by the Export Meter.

2.5. In any Financial Year the Council shall pay FSWCA for all the electricity metered by the Solar PV System that is consumed (or deemed to be consumed) by the Relevant Buildings at electricity prices as per this Part of the Schedule and fixed for the Term.

2.6. All payments under the PPA shall be for the sole benefit of FSWCA. Payments under the PPA shall be due to FSWCA and not to Council / the Relevant Buildings. The Council will not claim PPA Payments, Export Payments or Renewable Obligation Certificates in relation to electricity generated by the Solar PV System.

2.7. FSWCA shall invoice the Council quarterly for electricity consumed or deemed to be consumed by it in that period and the Council shall pay FSWCA for such electricity within eight (8) weeks of being invoiced for it.

3. RATES

3.1. FSWCA shall be responsible for, and shall pay when due any business rates or increased business rates or similar in respect of or as a result of the installation of the Solar PV System.

4. COMPENSATION

4.1 FSWCA shall be entitled to Compensation in accordance with Clause 30.2(a) (Termination for breach);

4.1. Compensation shall be paid to FSWCA within 30 days of the compensation rate and method being agreed between the parties.

5. SURPLUS PROFIT

5.1. If in any Financial Year commencing after the Financial Year in which the Solar PV System was commissioned, FSWCA makes a net profit after allocation to the Repairs & Contingencies Fund that surplus shall be distributed to the Community Benefit Fund. The Community Benefit Fund will be available to any qualifying community organisation operating within Wallacetown, who applies to FSWCA with a project that meets the objectives of FSWCA. The allocation shall be determined by FSWCA who will in principle favour applications which have the biggest carbon savings impact or help alleviate fuel poverty for residents in Wallacetown or other relevant community benefit that meets the objectives of FSWCA.

5.2. FSWCA shall promptly prepare its accounts for the Financial Year in which any payment is due to the Community Benefit Fund and shall seek to pay the Community Benefit Fund the Profit Share not materially later than the payment of any interest to its members in respect of that Financial Year

(anticipated to be by the latest in the seventh month of the year following the end of the Financial Year).

- 5.3. If the Profit Share attracts VAT then that shall be paid in addition.
- 5.4. It is agreed that it may be necessary for FSWCA, particularly in its first few Financial Years, to retain Profit for working capital, which may defer the distribution of funds to the Community Benefit Fund.

6. LATE PAYMENT

- 6.1. If the Council fails to make any payment due to FSWCA under this Agreement by the due date for payment, then the Council shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Council shall pay the interest together with the overdue amount.

PPA PAYMENTS AND USE OF ELECTRICITY GENERATED

1. All income received from the sale of electricity generated by the Solar PV System on the Relevant Building and exported to the grid shall belong exclusively to FSWCA.
2. The Council will consume electricity generated by the Solar PV System for the benefit of the Relevant Building at a rate to be agreed following the formula described at 2.2 above. For illustrative purposes, rates at time of signing are shown in the table below:

Illustration of Rates for Council's Electricity Consumption		
Building	SAC Market Rate 2024/25	Project Rate (based on agreed formula)
Newton PS	30.4p/kWh	27.5p/kWh
St John's PS	30.4p/kWh	27.5p/kWh
Wallacetown EYC	24.6p/kWh (daytime)	22p/kWh (daytime)

This is Part 8 of the Schedule referred to in the foregoing Contract.

1. THE GRANT

The Council:

1.1. grants to FSWCA, its agents, contractors, workmen and others employed or authorised by FSWCA the right to enter in and onto the Relevant Building (together with any necessary equipment including scaffolding) in order to:

1.1.1. survey the Relevant Building and ascertain its suitability for the installation and operation of a Solar PV System including suitability for the carrying out of Solar PV System Attachment Works and Solar PV System Ancillary Works and (as ancillary thereto) the right to examine all available drawings and information relating to the structure and condition of the Relevant Building which are in the possession or control of the Council; PROVIDED that if any Relevant Building is found by FSWCA to be unsuitable, FSWCA shall so advise the Council in writing. If the Council, acting reasonably, agrees that that Relevant Building is unsuitable, it shall thereupon cease to be a Relevant Building and shall be excluded from this Agreement; and the Council shall use its reasonable endeavours to obtain substitute Relevant Building(s) in accordance with Part 2 of the Schedule (Relevant Buildings); and.

1.1.2. in or upon each Relevant Building carry out and complete the Solar PV System Attachment Works.

1.2. grants to FSWCA the right to carry out and complete the Solar PV System Ancillary Works at all reasonable times and (subject to paragraph 1.4) upon not less than 14 days' notice and by appointment with the head (or equivalent) of the Relevant Building.

1.3. grants to FSWCA the right to use and exclusively occupy that part of the roof of the Relevant Building and airspace above the same as is required for the placing and operation of any panel or panels or other roof-mounted parts of the Solar PV System; and

1.4. grants to FSWCA the right, notwithstanding the terms of paragraph 1.2 to enter the Relevant Building at any time without giving notice but

only in the case of Emergency in order to carry out any works to the Solar PV System.

1.5. The Council reserves its right to enter any Relevant Building at any time and at its discretion to inspect, repair, maintain, install, construct, re-route or replace:

1.5.1. the roof and any structural parts of the Relevant Building.

1.5.2. any Service Media.

but not so as to restrict the benefit to FSWCA of the Grant and taking all precautions reasonably practicable to avoid damage to the Solar PV System. The Council will pay to FSWCA on demand all costs reasonably incurred by FSWCA in making good any such damage to the Solar PV System.

2. THE OBLIGATIONS OF FSWCA

2.1. In the exercise of the rights granted by paragraph 1 above, FSWCA shall at all times:

2.1.1. comply with the terms of all Necessary Consents for the Solar PV System Attachment Works and shall further comply with the provisions of all legislation and all other applicable legislation governing the exercise of such rights;

2.1.2. as part of the surveys referred to in paragraph 1.1.1, FSWCA shall make a record of the condition of the roof of the Relevant Building, for the approval of the Council (acting reasonably) The Council will advise FSWCA in writing on any specific requirements for installation on a property by property basis following the production to it of those records.

2.1.3. carry out the Solar PV System Attachment Works to the Relevant Building in a good and workmanlike manner and at its own expense. FSWCA shall procure that, after completion of the Solar PV System Attachment Works the roof of the Relevant Building is in no worse condition than that recorded in the survey referred to in paragraph 2.1.2 and in particular shall procure that if the roof is recorded as being weather tight it shall be weather tight after completion of the Solar PV System Attachment Works. There shall be excluded from this obligation minor or cosmetic damage, damage resulting from general deterioration of or wear and tear to the Relevant Building in the period from the date of

the survey to the date of completion of the Solar PV Attachment Works and damage which is not solely attributable to the Solar PV Attachment Works.

2.1.4. carry out all Solar PV System Attachment Works in such a way as to use reasonable endeavours to keep to the minimum reasonably practicable interference and inconvenience to the Council and occupants of the Relevant Building; and

2.1.5. resolve any material Power Quality issues within the Relevant Building that arise as a direct result of the Solar PV System.

2.2. FSWCA shall not remove the Solar PV System from a Relevant Building without the consent of the Council (who shall act reasonably in giving or withholding such consent), except that if the Relevant Building users act in such a way that would constitute a serious and material or persistent breach of this Agreement FSWCA has the right to uninstall the Solar PV System or any part of it; but (other than in Emergency, when removal may proceed immediately) before doing so FSWCA will give the Council thirty (30) days written warning of its intent and shall give the Council a reasonable opportunity to comply with this Agreement.

2.3. As soon as is reasonably practicable after commencement of the Term, FSWCA will provide a communications plan and a project programme for review and approval by the Council, such approval not to be unreasonably withheld or delayed.

2.4. FSWCA shall ensure that:

2.4.1. it will comply and cooperate with the Council's reasonable directions (or those of any authorised representative of the Council) regarding the security of the Relevant Buildings; and

2.4.2. only those of FSWCA's personnel that are duly authorised to enter upon the Relevant Buildings for the purposes of providing the Services, do so.

2.5. FSWCA shall notify the Council immediately on becoming aware of any damage caused by FSWCA, its agents, employees or Sub-Contractors to any property of the Council or to any Relevant Building during the Term.

2.6. In the exercise of the rights granted by paragraph 1. above, FSWCA shall at all times:

- 2.6.1. keep and maintain the Solar PV System in good and safe working order including routine inspection in line with Good Industry Practice and comply with all relevant health and safety legislation.
- 2.6.2. carry out all Solar PV System Ancillary Works in such a manner as to use reasonable endeavours to keep to the minimum reasonably practicable interference and inconvenience to the Council;
- 2.6.3. ensure that there will be no material disruption to everyday activities of schools and their pursuits during installation of the Solar PV System.
- 2.6.4. make good any damage caused to the Relevant Building in the course of carrying out the Solar PV System Ancillary Works including any decorative works, so far as reasonably practicable provided always that FSWCA shall not be required to make good any damage which is caused by or results from general deterioration or wear and tear to the Relevant Building or which is not solely attributable to the Solar PV System Ancillary Works;
- 2.6.5. undertake other than to the extent permitted in terms of this Agreement in respect of an Emergency never to take access to the Relevant Building without the prior written approval and by appointment with the Council and the Head (or equivalent) of the Relevant Building.
- 2.6.6. pay all costs in relation to any upgrades or works required as part of the FSWCA works to the existing supply of electricity and associated metering to the Relevant Building.
- 2.6.7. comply with all laws and with any recommendations of the relevant suppliers relating to the supply of electricity to or from the Relevant Building;
- 2.6.8. invite building users, the Council and its representatives to attend a demonstration/handover/commissioning of the Solar PV System.
- 2.6.9. include in its instructions to its installation contractors, suitable provisions for documentation on the Solar PV System that can be stored within the Relevant Building or held by relevant Council officers; and

- 2.6.10. include in the said instructions provision for appropriate labelling of equipment including any specific operational instructions.
- 2.7. Within twelve months following the date of signing of this Agreement FSWCA shall provide to the Council all such information as the Council may reasonably require to allow the Council from time to time to calculate Compensation. To the extent that any such information is not available to FSWCA within the said period of twelve months, using reasonable endeavours, it will be supplied to the Council as soon as it is reasonably practicable if and when it becomes available. All such information shall be deemed Confidential Information.
- 2.8. FSWCA will enter into discussions with the Council if, on commencement of works to install the PV systems, the roof of any Relevant Building is found to require significant repairs, with a view to agreeing a contribution from the project towards the cost of those repairs. That contribution may be through a direct payment(s) towards the cost or through an improved reduction in the rate paid by the Council for electricity consumed in the Relevant Buildings. These contributions, where necessary could be spread over several years. This clause 2.8 only applies to unforeseen repairs which only become apparent at the installation phase.

3. THE COUNCIL'S OBLIGATIONS

- 3.1. The Council shall not authorise, cause, enable (by act or omission) or invite third parties to touch or interfere with the Solar PV System whilst the same remain attached to any Relevant Building except in so far as the same is permitted under this Agreement or in cases of emergency. The Council shall use its reasonable endeavours to prevent unauthorised access to the Relevant Building or to the site of the Solar PV System.
- 3.2. Following the completion of the Solar PV Attachment Works the Council shall repair as soon as is reasonably practicable any fault that develops in the Relevant Building's electrical system and shall indemnify FSWCA in accordance with the Agreement in respect of any such fault save where such fault is caused by FSWCA's equipment or installation works.
- 3.3. The Council shall use its best endeavours to procure that the Solar PV System is not affected by shading to any greater extent than as at the date of completion of the Solar PV System Installation Works, and shall prevent shading so far as it is within the Council's power, using reasonable endeavours, to do so.

3.4. In respect of the Relevant Buildings which are schools, if the Solar PV System is installed during term time or at any time when third parties may have access to the installation works, the Council shall ensure that the school shall undertake such necessary additional safety measures at FSWCA's cost, following consultation with and agreement of FSWCA and its contractors, to prevent access to the installation works and to ensure public safety

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- 3.5. The Council shall use all reasonable endeavours to maintain the electricity supply to the Solar PV System in all Relevant Buildings so that a continuous and safe connection is maintained.
- 3.6. Without prejudice to paragraph 4 (Repair Works) no notification to FSWCA will be required if there is disconnection of supply for a short period (not to exceed 24 hours) to allow the Council to carry out minor works or installation, but in that event the Council will use its reasonable endeavours to provide sufficient information on any outages or answer support queries from FSWCA.
- 3.7. The Council shall take all reasonable care of the Solar PV System and, except in the case of Emergency, shall not change or interfere with it or permit it to be interfered with without the express consent of FSWCA.
- 3.8. If the Council wishes to change the location of the Solar PV System or any part of it, the Council shall obtain the prior consent of FSWCA, which consent shall not be unreasonably withheld or delayed provided such change is carried out at the cost and expense of the Council and the change does not materially affect the electrical generation from the Solar PV System or FSWCA's entitlement to PPA Payments.

4. REPAIR WORKS

- 4.1. In the event that the Council intends to carry out Repair Works to the roof of the Relevant Building or other parts of the Relevant Building which may impact on the operation of the Solar PV System:
 - 4.1.1. the Council shall serve a Repairs Notice on FSWCA;
 - 4.1.2. the Council will carry out the Repair Works as expeditiously as possible, and so as to minimise loss of PPA Payments and / or Export Payments to FSWCA.
 - 4.1.3. if necessary and as stated in the Repairs Notice, FSWCA shall, prior to the expiry of the notice period specified in the Repairs Notice (which, for the avoidance of doubt, will not be less than six weeks), remove at the expense of the Council such parts of the Solar PV System as are specified in the Repairs Notice and any other parts which FSWCA acting reasonably considers require to be removed in the circumstances;

4.1.4. the Council shall immediately upon completion of the Repair Works in respect of which the Repairs Notice was served notify FSWCA and shall afford FSWCA such rights as required to reinstate the Solar PV System removed under this paragraph 4 at the expense of the Council; and

4.1.5. service of a Repairs Notice shall amount to a temporary modification of the provisions of this Agreement only and shall not terminate or prejudice the continuing effect of this Agreement. If as a consequence of undertaking such repairs the Solar PV System is disconnected for a significant period, the Council entirely at its own discretion may consider paying compensation to FSWCA for loss of revenue until the Solar PV System is reconnected.

5. REDEVELOPMENT WORKS

5.1. If the Council intends to carry out Redevelopment Works the Council shall serve a Redevelopment Notice upon FSWCA.

5.2. Following service of a Redevelopment Notice, the Council and FSWCA shall discuss and negotiate in good faith to determine whether the Solar PV System can be relocated in accordance with the PPA terms and in such a location to deliver similar electrical output.

5.3. If either the Solar PV System cannot be relocated in accordance with the PPA terms or failing agreement pursuant to paragraph 5.2 within two months following service of the Redevelopment Notice, the Relevant Building shall be excluded from this Agreement.

6. THE COUNCIL WARRANTY OF OWNERSHIP

6.1. The Council hereby warrants that it is the heritable proprietor of the Relevant Building (or its part of the Relevant Building) and that it has obtained all necessary consents relating to the Relevant Building (or its part of the Relevant Building) (or relevant part thereof) at the date of the Council's execution of this Agreement.

6.2. The Council does not warrant that the Relevant Building is suitable for the purposes for which the Grant is made, or exercise of the rights granted to FSWCA.

6.3. For the avoidance of doubt, nothing herein contained or implied or done in terms of this Agreement shall prejudice or affect the powers,

rights, duties and obligations of South Ayrshire Council or its statutory successors as local authority, Planning Authority, Building Control Authority, Roads Authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve FSWCA of the necessity of obtaining from the Council in said capacity all consents, permissions, warrants or approvals as may be requisite under or by virtue of any such public or local Act or others.

7. EXCLUSION OF BUILDINGS FROM THE AGREEMENT

If:

- 7.1. the Relevant Building is destroyed, by any cause, or is damaged to the extent that the continued location on the Relevant Building of the Solar PV System is in the reasonable opinion of FSWCA impracticable or commercially undesirable save where such destruction or damage is caused by the negligence of FSWCA; or
- 7.2. FSWCA finds, when carrying out the Solar PV System Attachment Works, that the Relevant Building contains any substance generally recognised as hazardous or as dangerous to human health (for example, asbestos), and FSWCA and the Council, each acting reasonably are unable to agree a means by which the risk of the presence of such material can be mitigated or removed to allow the completion of the Solar PV Attachment Works; or
- 7.3. (without prejudice to the Council's obligations in terms of paragraph 3.3) in consequence of any change in the built environment in the vicinity of the Relevant Building the operation of the Solar PV System is adversely affected by shadowing or like cause, and FSWCA and the Council, each acting reasonably, are unable to agree a re-location on the Relevant Building of the Solar PV System such as to resolve the issue

then, in any such case that Relevant Building shall be excluded from this Agreement with effect from, as the case may be, (i) the date of the destruction or damage, (ii) the date from which the parties are unable to agree a means by which the risk of the presence of such material can be mitigated or removed to allow the completion of the Solar PV Attachment Works or (iii) the date from which the parties are unable to agree a re-location on the Relevant Building of the Solar PV System such as to resolve shadowing or like cause and another Relevant Building(s) shall be substituted in place of an excluded Relevant Building(s).

8. ALIENATION BY THE COUNCIL

In the event of the Council disposing of its interest in any Relevant Building, in whole or in part that building shall cease to be a Relevant Building for the purposes of this Agreement as at the date of the disposal if the Council fails to obtain the consent of any new owner of any Relevant Building to the installation of the Solar PV System. The Council shall work with FSWCA and using its best endeavours, attempt to identify a suitable, alternative Relevant Building.

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Part 9

Commercially Sensitive Information

This is Part 9 of the Schedule referred to in the foregoing Contract

Information	Part 7 of the Schedule (Financial Provisions) including the price at which FSWCA sells electricity to the Council.
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Appendix 2 – Risk Register, Wallacetown Community Energy Project

Risk	Likelihood	Impact	Mitigation
Failure to identify suitably experienced and qualified contractors.	Low	High	Procurement undertaken by FSW Association with support from PDS. Contracts advertised via PCS and networks. Robust tender evaluation process.
Failure to gain grid connection	Low	Medium	Distribution Network Operator has confirmed grid connection. Alternative options include local battery storage and EV charging points. Would not impact use of electricity by host schools.
Failure of PV systems once installed	Medium	Medium	Robust procurement process to identify appropriately qualified contractors and suppliers. Components installed to industry standards supported by guarantees. Regular inspection and maintenance throughout project lifespan in collaboration with SAC's Property Maintenance team.
Roofs and/or panels require repair	High	Medium	Regular maintenance of PV systems will be programmed and undertaken by the project's management contractor. Project will collaborate with SACs Education and Property Maintenance Teams to facilitate required works and minimise impact on school operations. Panels will be removed and reinstated to allow roof repairs in-line with Project Agreement. Annual allocation by project to cover planned maintenance and ad-hoc repair costs.
SAC decide to close or otherwise dispose of the buildings	Medium	Medium	At this time, no disposals or change of use are planned. SAC will engage with FSW Association on any future change and work collaboratively to identify alternative host buildings if possible. Detailed in Project Agreement.
Changes to legislation negatively impacting the project	Low	Medium	Broad political support for Net Zero principle. Anticipate opportunity to participate in consultation ahead of any significant change.
Changes in energy market	High	Medium	It is likely the market and applicable rates will fluctuate. Over 25 years impact is likely to be low but

			projections can be adjusted as required.
Wider Political Factors	Medium	Low	Changes are expected. Projections can be adjusted as required.
Changes to weather patterns	Medium	Medium	Projections taken from Feasibility Study will be adjusted as required based on actual performance.
Removal of panels after 25 year period	High	Low	As per Project Agreement, panels will be removed after 25 years, at the expense of FSW Association or transferred to SAC ownership.

Integrated Impact Assessment Summary Report

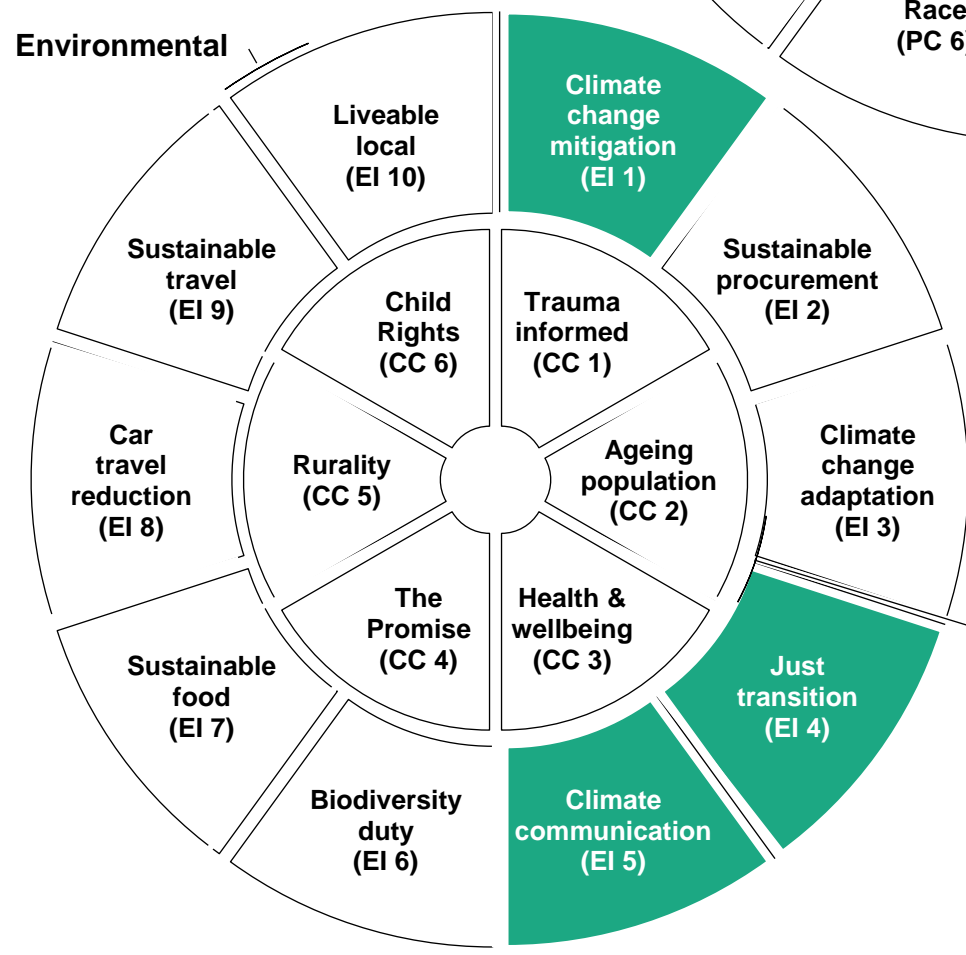
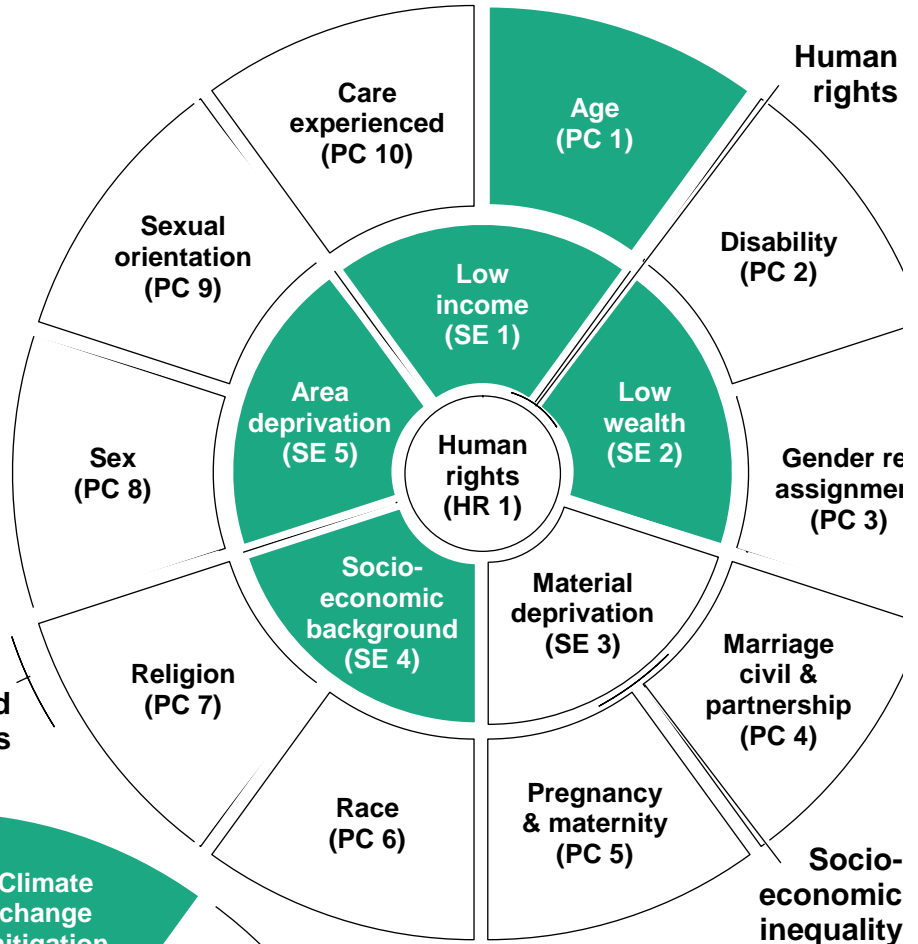
Wallacetown Community Energy Project



Completed by:

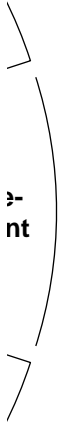
Colin Love,
Team Leader Community Asset Transfer,
Asset Management & Community Asset Transfer

Date started: 09/10/24



To be implemented by 01/11/24
Review by 01/11/24
Oversight Panel

negative impact	uncertain / not clear
positive impact	no impact / not applicable



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