



Dated 21 day of JULY 2023

(1) JOHN McCARTHY  
(2) FRANCES DALY

Grantor

CUMMEENNABUDDOGE WIND DESIGNATED  
ACTIVITY COMPANY

Grantee

OPTION AGREEMENT  
FOR CO-OPERATION AND MITIGATION AGREEMENT

Re: Property located at Cummeennabuddoge comprised in Folio 15949, County Kerry

THE PROPERTY REGISTRATION AUTHORITY

COUNTY KERRY

FOLIO 15949

AGREEMENT dated the 21 day of JULY 2023  
between

JOHN McCARTHY and FRANCES DALY both of Knocknagowan, Clonkeen P.O., Killarney, County Kerry (hereinafter together called "the Grantor" which expression shall, where the context so admits or requires include their executors, administrators, assigns and successors in title) of the One Part

AND

CUMMEENNABUDDOGE WIND DESIGNATED ACTIVITY COMPANY (company number 696663) having its registered office c/o Futureenergy Ireland, 27/28 Herbert Place, Dublin 2, DO2DC97 (hereinafter called "the Grantee" which expression shall, where the context so admits or requires include its successors and assigns) of the Other Part.

**WHEREAS:**

- A. The Grantor is the owner of the lands set out in Schedule 1 (hereinafter called the "Grantor's Property").
- B. The Company intends to apply for planning permission to build a wind farm at Cummeennabuddoge, County Kerry comprising of 19 (nineteen) wind turbines, site substation, roads and ancillary works and services ("the Wind Farm").
- C. The parties hereto have agreed to enter into this Agreement to facilitate the development of the Wind Farm.

**DEFINITIONS:**

In this Agreement the following expressions shall have the following meaning.

- |                              |  |
|------------------------------|--|
| "the Completion Date"        | means fourteen days after the Grantee serves the Option Notice (as defined in Clause 1.3 below) in accordance with this Option Agreement on the Grantor.   |
| "the Co-operation Agreement" | means the agreement in the form which is annexed hereto at Schedule 2.   |
| "the Grantee's Solicitors"   | means Beauchamps Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2.  |
| "Group Company"              | means any company which is a member of the same group as the Grantee or a company formed as a joint venture company between the Grantee (or any member of the same group as the Grantee) and any third party. For the purposes of this definition, the group means the Grantee, any company of which the Grantee is a subsidiary (its holding company), any subsidiary of such holding company and any company which is a subsidiary of the Grantee. |
| "the Option Fee"             | means the sum of [REDACTED] payable on the execution of this Agreement by both parties hereto.   |

"the Option"	means the right on the part of the Grantee to call for the Co-operation Agreement under the terms of this Agreement within the Option Period.
"the Option Period"	means five (5) years from the date of this Option Agreement (the "Initial Option Period") or such further period as may be applicable subject to and in accordance with clause 1.2 below.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-**

- 1.1 In consideration of the payment of the Option Fee by the Grantee (the receipt of which is hereby acknowledged by the Grantor) the Grantor hereby grants to the Grantee the Option which may be exercised during the Option Period.
- 1.2 The Option Period may be extended by the Grantee sending written notice to the Grantor of the requirement to extend for a further period of three (3) years in the event where during the Initial Option Period either:
  - 1.2.1 in the case of an application for planning permission to the relevant local authority and/or to An Bord Pleanála ("ABP") no decision has been received; or
  - 1.2.2 in the case an application for planning permission for which a decision has been received but same is subject to or is potentially subject to an appeal or to an application for Judicial Review the outcome of which has not yet been determined during the Initial Option Period; and/or
  - 1.2.3 in the case of an application for a Grid Connection Agreement ("GCA") to connect the WindFarm to the national electricity grid the GCA has either not issued or, if issued, has not yet been finalised and become binding on the parties thereto; and/or
  - 1.2.4 in the case of the Renewable Energy Support Scheme ("RESS") or such support scheme for renewable energy projects as may from time to time be in effect in Ireland the Grantee has not yet entered into a binding contract to avail of the RESS subsidy or such other subsidy as may be in effect.
- 1.3 On the execution of this Option Agreement the Grantor shall also execute the Co-operation Agreement (in duplicate), all of which shall be delivered to the Grantee's Solicitors to be retained by them on a trust basis pending the exercise of the Option.
- 1.4 The Option shall be exercised by the Grantee serving on the Grantor at any time during the Option Period a notice in writing (the "**Option Notice**") exercising the Option and specifying that the Grantee is calling for the grant of the Co-operation Agreement.
- 1.5 On the Completion Date the parties hereto agree that the Co-operation Agreement annexed hereto shall be countersigned by the Grantee, dated and one part returned by the Grantee's Solicitors to the Grantor and shall be immediately effective between the parties.

**2. AND IT IS HEREBY AGREED BETWEEN THE GRANTOR AND GRANTEE AS FOLLOWS:-**

- 2.1 On foot of the execution of this Option Agreement, there exists between the Grantor and the Grantee a binding agreement for the Grantor to grant the Co-operation Agreement to the Grantee in accordance with the terms of this Option Agreement.



- 2.2 The Grantor shall not, during the Option Period, sell, licence, sub-licence, lease, sublease or grant any option or right of possession or use of the Grantor's Property to any other person or entity, without the prior consent of the Grantee.
- 2.3 The Grantor shall not carry out any activity nor deal with, use or permit any third party to use the Grantor's Property in a manner detrimental to the exercise of the Option or which may interfere with or cause damage or delay to the development of the Wind Farm to include but not exclusively:
- 2.3.1 Erecting any buildings or structures on the Grantor's Property; and/or
- 2.3.2 Residing at or otherwise occupying or permitting the residing at or occupation by a third party of any house, building or other structure located on the Grantor's Property.
- 2.4 In the event that the Grantor shall sell or otherwise dispose of the Grantor's interest in the Grantor's Property to a third party the Grantor shall procure that the Option shall continue to be enforceable by the Grantee against the third party and shall take all necessary steps that shall be reasonably required by the Grantee to ensure that upon the subsequent exercise of the Option an enforceable agreement will be agreed between the Grantee and the third party and so that upon the sale or disposal by the third party the same obligations as are contained in this Agreement shall apply and the Option created by this Agreement shall be binding upon and capable of enforcement against all owners of the said interest during the Option Period and it is agreed that the Grantor shall give not less than twenty eight days' notice to the Grantee of the Grantor's intention to sell or otherwise dispose of the Grantor's interest in the Grantor's Property or any part thereof to the third party.
- 2.5 The Grantee shall be entitled to mortgage/charge or otherwise encumber its interest in this Agreement in favour of a financial institution or any other party providing finance in respect of the construction and operation of the Wind Farm and the Grantor hereby agrees to execute any such documents as are required by the Grantee, the Grantee's financial institution or a third party to perfect the financial institution's / third party's security over the Grantee's interest in the Grantor's Property arising under this Agreement.
- 2.6 The Grantor shall, where required by the Grantee, sign and deliver to the Grantee such letter or letters of consent as it may require in order to confirm the Grantor's support for any application or applications for a planning permission (in one or both of the formats set out at Schedule 3 hereto) and/or for a GCA and/or for acceptance in RESS or other support scheme such as the Grantee may deem necessary for development of the Wind Farm.
- 2.7 The Grantee shall have the right to assign the benefit of this Option without the need for consent to any Group Company or special purpose vehicle incorporated to undertake the development of the Wind Farm as may be notified in writing by the Grantee to the Grantor. The Grantee shall have the right to assign the benefit of this Option to a third party not being a Group Company or special purpose vehicle incorporated to undertake the development of the Wind Farm with the consent of the Grantor such consent not to be unreasonably withheld or delayed.
- 2.8 The Grantor hereby warrants that it has good and marketable title to the Grantor's Property free of charges and/or encumbrances and that if called upon by the Grantee to do so will without delay furnish evidence of good title and satisfactory replies or documentation, including mortgagee/chargee consent, in response to any requisitions or requests for same raised by or on behalf of the Grantee.

### **3. ASSIGNMENT, NOVATION OR TRANSFER OF OPTION AGREEMENT**

- 3.1 Notwithstanding any other provision of this Option Agreement:

- a. The Grantee shall be entitled to assign, novate or transfer the benefit of this Option Agreement to any third party and for the avoidance of doubt such third party shall include (but is not limited to) a funder for the purpose of security, the parent company or companies of which the Grantee forms part, a subsidiary company or an "Affiliate" of the Grantee as that term is defined in the Companies Act 2014, or a company formed as a joint venture company comprising the Grantee and one or more other parties. The Grantee shall not be required to seek the consent of the Grantor to an assignment, novation or transfer in accordance with this Clause 3.1.
- b. The Grantor shall not be entitled to assign the burden and/or benefit of the Option Agreement without the prior written consent of the Grantee (which consent shall not be unreasonably withheld or delayed). Prior to granting such consent, the Grantee shall be entitled in its discretion to specify conditions to any consent to assignment and the Grantor shall comply with all such conditions and shall raise no objection or enquiry in relation to same.

#### **4. MISCELLANEOUS PROVISIONS:**

- 4.1 Costs and Expenses: The Grantee shall make a contribution of [REDACTED] plus VAT, towards the professional costs of and incidental to this Agreement and to finalising the Co-operation Agreement hereby agreed to be made, that may be incurred by the Grantor.
- 4.2 Governing Law and Jurisdiction: This Agreement and all relationships created hereby will in all respects be governed by and construed in accordance with Irish law. The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of Ireland over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.
- 4.3 Survival of Obligations: This agreement and the obligations and rights contained herein shall, only where applicable, continue to be binding upon the parties hereto irrespective of the passing of the Option Period or the granting of the Co-operation Agreement.
- 4.4 Except to the extent required by law (including any requirements of any stock exchange or any other regulatory requirements) and save where necessary to implement this Agreement neither party to this Agreement will at any time without the written consent of the other party (both as to the announcement or communication and as to its form) make any press or other public announcement or divulge or communicate to any person any of the terms (including but not limited to financial terms) of this Agreement and the parties will take all reasonable steps to bind their respective servants agents and advisers in this respect.

#### **5. REGISTRATION OF BURDEN**

- 5.1 The Grantor assents to the registration of this Option and the covenants herein as a caution on Folio 15949 County Kerry.

**IN WITNESS** whereof the parties hereto have set their hands and affixed their seals the day and year first herein written.

**SCHEDULE 1**

**ALL THAT AND THOSE** the property comprised in Folio 15949 of the Register of Freeholders County Kerry.

**SCHEDULE 2**

**(the "Co-operation Agreement")**

DATED THE                      DAY OF                      202[    ]

**(1) JOHN McCARTHY  
(2) FRANCES DALY**

of the one part

**AND**

**CUMMEENNABUDDOGE WIND DESIGNATED  
ACTIVITY COMPANY**

of the other part

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**CO-OPERATION AND MITIGATION AGREEMENT**

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**Beauchamps  
Solicitors  
Riverside Two  
Sir John Rogerson's Quay  
Dublin 2**



AGREEMENT dated the                      day of                      202[     ]

**BETWEEN**

**JOHN McCARTHY** and **FRANCES DALY** both of Knocknagowan, Clonkeen P.O., Killarney, County Kerry (hereinafter together called the "**Landowner**" which expression shall, where the context so admits or requires include their executors, administrators, assigns and successors in title) of the One Part

**AND**

**CUMMEENNABUDDOGE WIND DESIGNATED ACTIVITY COMPANY** (company number 696663) having its registered office c/o Futureenergy Ireland, 27/28 Herbert Place, Dublin 2, DO2DC97 (hereinafter called the "**Company**" which expression shall, where the context so admits or requires include its successors and assigns) of the Other Part.

**WHEREAS: -**

- A. The Company intends to apply for planning permission ("the Planning Permission") to build a wind farm at Cummeennabuddoge, County Kerry comprising of 19 (nineteen) wind turbines, site substation, roads and ancillary works and services (the "**Wind Farm**").
- B. The parties acknowledge that the Landowner ordinarily resides at Knocknagowan, Clonkeen P.O., Killarney, County Kerry but is also the owner of a second unoccupied dwelling at a location shown marked "H1" on the Plan attached hereto (which second dwelling shall hereinafter be referred to as "**the Property**"), being a location which may from time to time become subject to noise and/or shadow flicker generated by the Wind Farm during its operational lifetime. In light of this, the parties have entered into this Agreement.

**IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS: -**

- 1. That, in consideration of the payment by the Company to the Landowner of the sums set out in Schedule One hereto (the first payment of which the Landowner hereby acknowledges) the Landowner hereby:
  - (i) acknowledges that noise and/or shadow flicker may be experienced at the Property during the operational lifetime of the Wind Farm and in terms of its impact on the Property the Landowner confirms that he accepts this to be the case and irrevocably undertakes not to object to the Wind Farm, nor object to any planning application associated with the construction or operation of the Wind Farm, nor take any steps or proceedings in relation to the Wind Farm or any associated development, on any grounds whether based in a claim for nuisance or pursuant to section 160 of the Planning and Development Act 2000 (as amended) or otherwise;
  - (ii) irrevocably undertakes not to procure that any third party objects to the Wind Farm, nor object to any planning application associated with the construction or operation of the Wind Farm, nor takes any steps or proceedings in relation to the Wind Farm or any associated development, on any grounds;

- (iii) agrees and consents to the Company placing noise monitoring equipment on the Property (at a location to be agreed in advance with the Landowner) during the lifetime of the Wind Farm, should this be necessary in the reasonable opinion of the Company but subject to the following provisos and conditions:
  - a. the noise monitoring equipment shall not remain in situ at the Property for longer than eight (8) weeks from the date of installation without the prior written agreement of the Landowner; and
  - b. the Company shall furnish to the Landowner upon request with a copy of any data assessments and/or reports either in manual or electronic format as may be generated by the noise monitoring equipment; and
  - c. the Company shall make good any damage occasioned to the Property arising as a result of the transportation, installation and/or removal of the said equipment;
- (iv) agrees that the Company hereby shall have a right of pre-emption to purchase the freehold interest in the Property should the Landowner wish to sell the Property and in such circumstances:
  - a. the Landowner shall first write to the Company indicating his intention that the Property is to be sold. Thereafter the Company shall be afforded a period of 60 days from the date of the said notice within which to confirm to the Landowner whether it is exercising its right of pre-emption in order to purchase the Property. In default of the Company responding to the notice within the 60 days period or in the event the Company responds to confirm it is not proceeding to exercise its right of pre-emption then the Landowner will be at liberty to place the Property for sale on the open market;
  - b. In the event that the Company has notified the Landowner in writing of the exercise of its right of pre-emption and decision to buy the Property then the Parties shall within 28 days from the date of such notification thereafter either:
    - (i) agree the purchase price to be paid by mutual negotiation or
    - (ii) in default of being able to agree mutually the purchase price within the stated period shall then within a further period of 14 days mutually appoint an expert for the purpose of inspecting the Property and advising on the open market value and purchase price to be paid.
  - c. In the event that the step outlined at sub-clause 1(iv)b(ii) is required the Parties hereto agree to be bound by the valuation figure furnished by the appointed expert and thereafter to enter into a contract for sale at the advised figure within 14 days thereafter and to complete the sale within 30 days of the date of the contract for sale.
  - d. Should it be necessary to appoint an expert then such expert shall be a full member of at least 10 years standing with the Society of Chartered Surveyors Ireland with sufficient experience in the valuation of properties of the same type as the Property. In the absence of agreement between the Parties as to an expert appointment the matter may on expiry of the 14 day period for such appointment be referred by either the Landowner or the Company to the President of the Society of Chartered Surveyors Ireland for such appointment to be made and the Parties hereto agree to be bound by such appointment.
- (v) In the event of a sale of the Property other than to the Company the Landowner agrees and irrevocably undertakes not to sell, let or otherwise dispose of the Property or grant possession of the Property, or any part thereof, to any person or party who / which does not contemporaneous with completion of any sale, letting or other disposal enter into a



separate Deed of Covenant with the Landowner and with the Company ensuring that person or party is made subject to the same terms as those contained in this Agreement and to the satisfaction of the Company; and

- (vi) Agrees to a minimum setback distance of 500 metres from the dwellinghouse located on the Property to the nearest wind turbine generator comprising part of the Wind Farm; and
  - (vii) Agrees and acknowledges that this Agreement is to be binding on his executors, administrators, assigns and successors in title.
- 2. The Company for its part acknowledges and agrees that, without prejudice to the rights and obligations contained in clause 1 hereinabove, it will operate the Wind Farm in compliance with the guidelines relating to noise and shadow flicker contained in the 2006 Wind Energy Development Guidelines published by the Department of the Environment, Heritage and Local Government.
  - 3. The Landowner hereby assents to the registration of this Agreement as a caution on Folio 15949 County Kerry.
  - 4. Upon the final decommissioning of the Wind Farm, the Company undertakes that it shall take all necessary steps to remove any caution that may have been registered on Folio 15949 County Kerry in relation to this Agreement.
  - 5. The Company shall be permitted to assign, novate or transfer the benefit of this Agreement to any third party without the prior written consent of the Landowner.
  - 6. The Landowner hereby further agrees and covenants that where called upon to do so by the Company he shall enter into a direct agreement and/or meet other requirements without undue delay as required by a bank lender or other financial institution which is providing finance to the Wind Farm subject always to the Company being responsible for discharging the reasonable invoiced legal fees which might be incurred by the Landowner in connection with the requirements of this clause.
  - 7. The Parties to this Agreement, shall treat this Agreement and all information received or obtained in connection with or contained in this Agreement as confidential (the "**Confidential Information**"). A Party shall not, without the prior authority of the other Party, disclose (and shall use all reasonable efforts to prevent disclosure) in any way or form and at any time (whether before or after termination of this Agreement and howsoever such termination shall come about) to any person, firm or company any of the Confidential Information save that:
    - (i) The Company may disclose the Confidential Information without prior authority:
      - a. to employees, and professional advisors of the Company whose duties require such disclosure; and/or
      - b. to the extent as is necessary in the ordinary course of business; and/or
      - c. to any prospective purchaser, funder or investor in the Wind Farm or the Company; and/or
      - d. as may be required by Law; and

(ii) The Landowner may disclose the Confidential Information without prior authority:

- a. to his legal advisors; and/or
- b. to a third party as may be required strictly in order to ensure adherence by a third party with the terms of this Agreement; and/or
- c. as may be required by Law.

8. This Agreement shall commence on the date hereof and shall, subject at all times to the Company's right of termination under clause 9 below, continue in full force and effect for the full operational lifetime of the Wind Farm which shall include any period when the Wind Farm is non-operational for the purpose of re-powering the Wind Farm and until the date of final decommissioning of the Wind Farm, such date to be advised in writing to the Landowner by the Company without undue delay ("**the Term**").
9. The Company shall have the right to terminate this Agreement upon giving the Landowner written notice thereof with such termination to be effective upon and following 4 months from the date when such notice is issued by the Company to the Landowner.
10. Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity of the remaining provisions hereof shall not in any way be affected or impaired thereby.
11. This Agreement is governed by, and shall be construed in accordance with, the laws of Ireland. The courts of Ireland have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of Ireland.

**SCHEDULE ONE**

The Company shall on the date of this Agreement and on [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

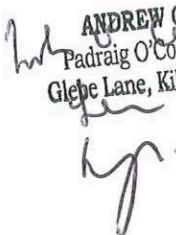


IN WITNESS whereof the parties hereto have executed this Deed the day and year first herein written.

SIGNED and DELIVERED by  
THE LANDOWNER  
in the presence of:-

John Mc Carthy

Frances Daly.

ANDREW O'CONNELL  
Padraig O'Connell Solicitors  
Glebe Lane, Killarney, Co. Kerry  


PRESENT when the COMMON SEAL  
of THE COMPANY  
was affixed hereto:-

**SCHEDULE 3**

**(Planning Consent Letter Templates)**

**Template 1**

The Planning Department  
Kerry County Council  
County Buildings,  
Ratass,  
Tralee,  
Co. Kerry

[Insert date]

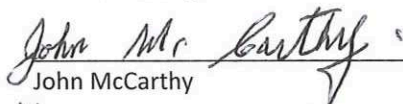
Re: Cummeenabuddoge Wind Farm, County Kerry

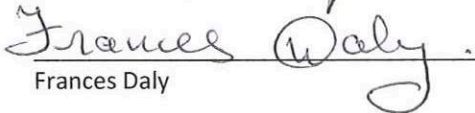
Dear Sirs,

We hereby confirm that we are the registered joint owners of the property comprised within the Folio KY15949 as more particularly shown and outlined on the plan accompanying this letter ("the Property").

We hereby give irrevocable consent to any planning application or applications made by or on behalf of Cummeenabuddoge Wind Designated Activity Company or its associated companies in connection with the proposed windfarm which it intends to develop on land located in and around Cummeenabuddoge, County Kerry which is neighbouring or adjacent to our Property.

Yours sincerely,

  
John McCarthy

  
Frances Daly

Template 2

An Bord Pleanála  
64 Marlborough St,  
Rotunda,  
Dublin 1,  
D01 V902

[Insert date]

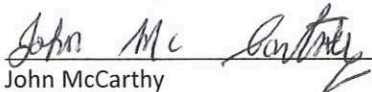
Re: Cummeenabuddoge Wind Farm, County Kerry

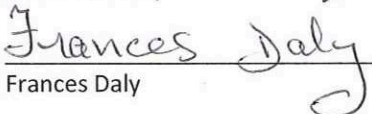
Dear Sirs,

We hereby confirm that we are the registered joint owners of the property comprised within the Folio KY15949 as more particularly shown and outlined on the plan accompanying this letter ("the Property").

We hereby give irrevocable consent to any application, appeal or submission made by or on behalf of Cummeenabuddoge Wind Designated Activity Company or its associated companies to An Bord Pleanála in connection with the proposed windfarm which it intends to develop on land located in and around Cummeenabuddoge, County Kerry which is neighbouring or adjacent to our Property.

Yours sincerely,

  
John McCarthy

  
Frances Daly

**SIGNED AND DELIVERED** as a deed

By the said **JOHN MCCARTHY**

In the presence of:-

*John Mc Carthy*

**ANDREW O'CONNELL**  
Padraig O'Connell Solicitors  
Glebe Lane, Killarney, Co. Kerry

**SIGNED AND DELIVERED** as a deed

By the said **FRANCES DALY**

In the presence of:-

*Frances Daly.*

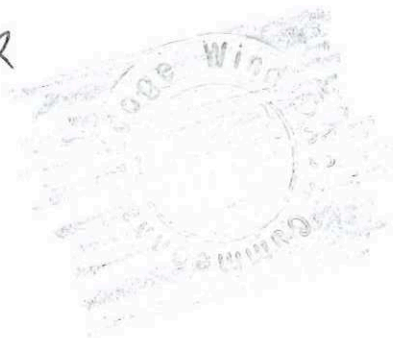
**ANDREW O'CONNELL**  
Padraig O'Connell Solicitors  
Glebe Lane, Killarney, Co. Kerry

**PRESENT** when the Common Seal  
of **CUMMEENNABUDDOGE WIND**  
**DESIGNATED ACTIVITY COMPANY**  
was affixed hereto:-

*Peter Lynch*

Peter Lynch, Director

*Witness  
Jim Caplan, Director  
CRO Fuzunomena Y INELAND  
27/28 He-hut place  
Dublin 2.*





Dated 21 day of JULY 2023

(1) JOHN McCARTHY  
(2) FRANCES DALY

Grantor

CUMMEENNABUDDOGE WIND DESIGNATED  
ACTIVITY COMPANY

Grantee

**OPTION AGREEMENT  
FOR CO-OPERATION AND MITIGATION AGREEMENT**

**Re: Property located at Cummeennabuddoge comprised in Folio 15949, County Kerry**

Beauchamps  
Riverside Two  
Sir John Rogerson's Quay  
Dublin 2  
Ref: FUT6.6