To:

1

**[--]**

xxxxx

xxxx - xxxx (as **Agent**)

**[--]**

xxxxx

xxxx - xxxx

**Parco Eolico Casalduni House S.r.l.**

xxxxx

xxxx - xxxx

*Place, date*

**RE: direct agreement relating to the financing of a wind farm project with an aggregate capacity equal to xxx MW in the Municipality of xxxxxx**

Dear Sirs,

we hereby answer to your proposal to enter into a direct agreement, the text of which is fully reproduced herebelow:

“To:

**Siemens Gamesa Renewable Energy Wind S.r.l.**

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Via Ostiense 131/L

00154, Rome

Italy

**RE: direct agreement relating to the financing of a wind farm project with an aggregate capacity equal to xxx MW in the Municipality of xxxxxx**

Dear Sirs,

Further to our recent agreements, we herewith submit to you the terms and conditions in relation to the direct agreement:

This **DIRECT AGREEMENT** is entered into between:

1. **SIEMENS GAMESA RENEWABLE ENERGY WIND, S.r.l.** a company incorporated under the laws of Italy, having its registered office at Via Ostiense, 131/L, 00154, Rome, with registered number 08087711001 (the ***Contractor***);
2. **[--]** a company incorporated under the laws of [--], having its registered office at xxxxxx - xxx ([--]) with a fully paid-up corporate capital of Euro xxxxxx, number of registration with the Companies Registry of xxx and tax code No. xxxxxx, (an ***Original Lender*** and the ***Agent***);
3. **[--]**, a company incorporated under the laws of [--], having its registered office xxxxxx ([--]), with a fully paid-up corporate capital of Euro xxxxxx, number of registration with the Companies Registry of xxx and tax code No. xxxxxx, REA n. xxxxxx (an ***Original Lender***);
4. **Parco Eolico Casalduni House S.r.l.**, a company incorporated in Italy with registered office at xxxxxx, xx - xxxxxx (Italy), with a fully paid-in quota capital of Euro xxxxxx, and registered with the Companies Registry of xxx at No. xxxxxx, R.E.A No. xxxxxx xxxxxx (the ***Company***)

(collectively, the ***Parties*** and each of them a ***Party***);

**WHEREAS:**

(A) the Company is building and intends to operate a xxxxxx MW wind energy power plant in the Municipality of xxxxxx, xxx Region, Italy, along with the relevant interconnection infrastructure (the ***Plant***);

1. On xxx the Company and the Contractor have executed a full maintenance service agreement (the ***Contract***)under which the Company has contracted to the Contractor all the works and activities for the maintenance of the Plant;
2. On xxx, the Company, as issuer, and the Original Lenders executed a subscription agreement (the ***Subscription Agreement***) whereby the Original Lenders have undertaken to subscribe the notes issued by the Company (under the terms and conditions therein) for the purposes of financing, *inter alia*, part of the Plant construction costs.

**NOW AND THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS: 1. RECITALS AND DEFINITIONS**

1.1 The recitals to this agreement form an integral part of this Direct Agreement.

1.2 Unless otherwise noted, in this Direct Agreement the following definitions shall apply:

***Acceleration*** means, upon an Event of Default occurring which has remained outstanding and uncured and/or which has not been waived by the Finance Parties, the Agent submitting to the Company any of the notices under clause, as the case may be, xxx, xxx or xxx of the Subscription Agreement;

***Business Day*** has the same meaning as under the Contract;

***Contract*** has the same meaning as under recital (C) above;

***Contractor’s Notice*** has the meaning as under paragraph 4.2 of this Direct Agreement;

***Contractor’s Remedy*** has the meaning as under paragraph 4.1 of this Direct Agreement;

***Cure Options*** means each of the options available to the Lenders pursuant to paragraphs 5.1(a) and 5.1(b) of this Direct Agreement;

***Cure Period*** means a period of at least 30 calendar days starting from the date of receipt by the Agent of the Contractor’s Notice;

***Direct Agreement*** means this direct agreement, as it may be amended, supplemented and/or modified from time to time;

***Eligible Substitute*** means a third party which, in the reasonable opinion of the Agent and the Contractor, holds all legal, technical, financial and organizational skills, requisites and qualifications to replace the Company and step-into all the rights and obligations of the Company under the Contract. The Eligible Substitute shall comply with all the following requirements:

1. The Eligible Substitute shall prove, to the Contractor’s reasonable satisfaction, be in good financial standing or provide evidence of the availability of financing in order to meet the outstanding payment obligations under the Contract;
2. The Eligible Substitute shall not be a competitor of the Contractor and shall not belong to the same corporate group as a competitor of the Contractor;

3. The Eligible Substitute or its controlling company shall have not commenced or threatened in writing to commence any claim or action against the Contractor or any company within its group;

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***Event of Default***; means the occurrence of any breach of the Subscription Agreement by the Company which gives the Lenders the right to accelerate the facilities and exercise any other remedy under law and Subscription Agreement.

***Independent Engineer*** has the same meaning as under the Contract;

***Finance Parties*** means the Lenders and/or the Agent;

***Insolvency Proceeding*** means any insolvency proceeding (*procedura concorsuale*) under the applicable bankruptcy law;

***Lenders*** means (i) each Original Lender; and (ii) any bank, financial institution or other entity, other than the Original Lender, which becomes a lending party to the Subscription Agreement;

***Outstanding Obligations*** has the same meaning as under paragraph 6.1(a)(ii) of this Direct Agreement;

***Relevant Receivables*** means all receivables (whether current, future, contingent or otherwise) arising for the Company towards the Contractor pursuant to the Contract;

***Security Period*** means the period of time ending on the date on which all the amounts under the Subscription Agreement have been unconditionally repaid in full by the Company in accordance with the Subscription Agreement and all the above payments are no longer subject to insolvency claw back (revocatoria fallimentare) due to the expiry of the period (provided by the law applicable from time to time) during which such insolvency claw back action may be exercised under Italian law;

***Step-in Date*** has the same meaning as under paragraph 5.2 of this Direct Agreement;

***Step-in Notice*** has the meaning under paragraph 5.1(b)(i) of this Direct Agreement;

***Step-in Right*** has the same meaning as under paragraph 5.1(b) of this Direct Agreement;

***Subscription Agreement*** has the same meaning as under recital (D) above;

***Technical Advisor*** means [Fichtner], or any other qualified firm the Lenders may appoint as such.

1. **PURPOSE**

2.1 The purpose of this Direct Agreement is regulating certain obligations and undertakings of the Contractor towards the Lenders and the other Finance Parties in respect of the Contract, with a view to the fact that the Plant construction costs will be partly funded by utilising the credit facilities under the Subscription Agreement.

1. **ASSIGNMENT OF RELEVANT RECEIVABLES – REPRESENTATIONS BY THE CONTRACTOR**

3.1 The Contractor acknowledges and unconditionally agrees that the Company may assign (also by means of an *ad hoc* deed) all the Relevant Receivables by way of security in favour of the Lenders and the other Finance Parties, to secure all the Company’s obligations towards the Finance Parties pursuant to the Subscription Agreement and the other Finance Documents (as defined in the Subscription Agreement) (the ***Assignment***). [The Contractor hereby grants its irrevocable consent to the Assignment and unconditionally undertakes towards the Finance Parties to accept without reserves or exceptions the Assignment pursuant to articles 1248, 1264, and 1265 of the Italian civil code.][[1]](#footnote-2)

3.2 The Contractor hereby represents that:

1. on or prior to the date of this Direct Agreement, no other assignment of the Relevant Receivables or establishment of any other security interest over the Relevant Receivables has been notified to it, nor has it accepted any such assignment or establishment;

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1. on or prior to the date of this Direct Agreement, no seizures or attachments in respect of any Relevant Receivable has been notified to it;
2. it holds all powers, capacity and authority to validly execute this Direct Agreement and perform all its obligations thereunder;
3. approving, executing and performing this Direct Agreement and any obligation and/or undertaking thereunder do not and will not result in the Contractor being in breach of its by-laws and/or other constitutional documents.

3.3 The Contractor hereby undertakes (and the Company hereby agrees to such undertaking) to pay any amount due from time to time to the Company under the Contract (on account of restitutions, liquidated damages or otherwise) onto the bank account IBAN xxxxxx xxxxxx unless otherwise notified in writing by the Agent from time to time.

**4. CONTRACTOR’S REMEDIES**

4.1 Without prejudice to any further limitation or stricter provision binding on the Contractor under the Contract, the Contractor undertakes towards the Lenders and the other Finance Parties to exercise the following actions and remedies in accordance with paragraph 4.2 below:

1. terminate (*risolvere*) or withdraw from (*recedere*) the Contract;
2. call upon any *eccezione di inadempimento* to refrain from performing any of its obligations under the Contract;
3. lodge any petition for termination of the Contract by Court’s ruling (*domanda di risoluzione giudiziale*) or by an arbitration panel;
4. demand performance by the Company of any outstanding obligation under the Contract for the purposes of section 1454 of the Italian Civil Code (*diffida ad adempiere*);
5. call upon any automatic termination clause pursuant to section 1456 of the Italian civil code (*clausola risolutiva espressa*) that may be provided for in the Contract;
6. demand performance by the Company of any outstanding obligation under the Contract irrespective of elapse of any essential term (*termine essenziale*) pursuant to section 1457 of the Italian civil code;
7. exercise any rights pursuant to section 1461 of the Italian civil code in respect of the Contract;
8. lodge any petition for issue of an injunction order of payment (*decreto ingiuntivo*) or other similar measures by the relevant Court or arbitration panel;

(each of the above actions or remedies being the ***Contractor’s Remedies*** and each a ***Contractor’s Remedy***).

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4.2 Upon any circumstance occurring, entitling the Contractor to exercise any Contractor’s Remedy pursuant to the Contract, the Contractor shall (i) despite from any different or shorter cure period provided under the Contract, refrain from exercising any such Contractor’s Remedy for the entire duration of the Cure Period except if it implies time barring of any right or action available to the Contractor under the applicable law or the Agreement; and (ii) promptly submit a written notice (the ***Contractor’s Notice***) to the Agent indicating:

1. the Contractor’s Remedy it intends to carry out;
2. the date on which such proposed Contractor’s Remedy is intended to become effective (such date not to be set, in any case, before elapse of the Cure Period);
3. in reasonable detail, the reasons underpinning the exercise of such proposed Contractor’s Remedy (including, without limitation, details as to any amount due and unpaid by the Company to the Contractor under the Contract as at the date thereof).

4.3 Upon expiry of the Cure Period, if the Lenders have neither exercised the Step-In Rights nor cured the Company’s default under the Contract, the Contractor shall be entitled to immediately exercise the indicated Contractor's Remedy.

**5. CURE OPTIONS**

5.1 For the entire duration of the Cure Period, the Lenders (also acting through the Agent) shall be entitled (but shall in no case be obliged to), at their discretion, either:

1. cure (either directly or through a third party to be specifically selected) the Company’s default that has resulted in the Contractor submitting a Contractor’s Notice, it being understood that, upon such default being cured, the outstanding Contractor’s Notice shall be deemed as automatically revoked and void; or
2. appoint (also for the purposes of section 1401 of the Italian civil code) an Eligible Substitute to step into the Company’s entire contractual position under the Contract (such option being the ***Step-in Right***). In that event:
3. by means of a written notice (the ***Step-in Notice***) the Agent shall notify the Contractor and the Company as to the name of the Eligible Substitute;
4. the Contractor hereby agrees, also for the purposes of section 1407 of the Italian civil code to the extent applicable, to an entity qualifying as Eligible Substitute stepping into the entire contractual position of the Company under the Contract, in accordance with paragraph 5.2 below;
5. should the assignment of the Contract be perfected (if so agreed with the Agent) by means of a business transfer (*cessione di ramo d’azienda*), the Contractor hereby waives to its right to withdraw (*recedere*) from the Contract pursuant to section 2558 of the Italian Civil Code;
6. the Company hereby undertakes to take all actions and carry out any activity that may be required to swiftly and duly perfect the Eligible Substitute’s step-in.

5.2 The Parties agree that, in the event the Lenders exercise the Step-in Right, the

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Company’s entire contractual position pursuant to the Contract shall be transferred onto the Eligible Substitute effective as from the 5th Business Day as from the last between the Contractor receiving (i) the Step-in Notice or (ii) written confirmation that the Company has received the Step-In Notice (the ***Step-in Date***).

5.3 Upon the Lenders exercising the Step-in Right:

1. the Contractor, within 10 Business Days as of receipt of the Step-in Notice, shall indicate to the Agent all the amounts that have fallen due and payable to it as at the date thereof under the Contract, by means of a written notice to be submitted to the Agent with copy to the Company;
2. in any case, the Lenders’ ability to exercise the Step-in Right shall not be impaired or delayed as a consequence of the Contractor failing to timely comply with their undertakings under paragraph (a) above and, in the event such failure remains outstanding for more than 20 days, the Eligible Substitute shall be enabled, on the basis of the Contract or the relevant available accountancy documents, to acknowledge and pay any debt of the Company towards the Contractor pursuant to the Contract.

5.4 The Parties hereby acknowledge and agree that (i) in all cases provided under this Direct Agreement, the exercise of the Step-in Right shall constitute a right but not an obligation of the Lenders and is established in the exclusive interest of the Lenders and the other Finance Parties; and (ii) the decision as to whether exercising the Step-in Right in accordance with the provisions of this Direct Agreement shall be taken in the sole discretion of the Lenders.

5.5 In the event the Lenders opt to exercise the Step-in Right, the Company and the Contractor undertake, upon the Lender’s request (also acting through the Agent), to promptly execute all the deeds and carry out any formality that may be necessary under applicable law to ensure perfection and/or full validity and/or enforceability (*opponibilità*) of the transfer under paragraph 5.2 above (including, without limitation, any deed of assignment, as well as any notification, notice, order, instruction, filing and/or registration, however named) without expenses for the Contractor.

5.6 The Parties agree that the Lenders may exercise the Step-in Right according to the above provisions also upon occurrence:

1. of an Event of Default (as confirmed in writing by the Agent to the Contractor with copy to the Company); and
2. any other circumstance that may materially and adversely affect the exact and timely performance of the Contract.

5.7 With a view to safeguarding the Lenders’ ability to successfully carry out any Cure Option (if they elect to do so), the Contractor undertakes to refrain from promoting any Insolvency Proceeding against the Company for the entire duration of the Cure Period.

**6. CONSEQUENCES OF THE EXERCISE OF THE STEP-IN RIGHT**

6.1 The Parties agree that, starting on the Step-in Date:

(a) the Eligible Substitute shall step into the Company’s entire contractual position under the Contract and into all Company’s rights and obligations arising from (or in connection with) the Contract, including, without limitation:

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1. the benefit of any security interest created by the Contractor in favour of the Company pursuant to, or in connection with, the Contract; and
2. all Company’s outstanding obligations towards the Contractor which have fallen due and remained unsettled (the ***Outstanding Obligations***);

(b) The Eligible Substitute shall perform the Outstanding Obligations within the maximum period of 20 Business Days from the Step-in Date or within any longer period agreed between the Eligible Substitute and the Contractor considering the relevance of the Outstanding Obligations;

(c) any outstanding Contractor’s Notice shall be deemed as automatically revoked and void.

**7. EXERCISE OF CONTRACTOR’S REMEDIES**

7.1 In the event that, upon expiry of the Cure Period, the circumstances giving rise to the relevant Contractor’s Notice have remained uncured (including in the event the Eligible Substitute has failed to perform the Outstanding Obligations pursuant to paragraph 6 above), the Contractor shall be entitled to take any Contractor’s Remedy in accordance with the Contract, it being understood that no liability whatsoever towards any Party shall arise for the Lenders and/or the other Finance Parties in connection therewith.

**8. COVENANTS**

8.1 The Contractor undertakes to:

1. promptly inform the Technical Advisor and the Agent as to any event or occurrence that may (i) give rise to a Company’s default under the Contract; (ii) entitle the Contractor, for any reason whatsoever, to take any Contractor’s Remedy; and/or (iii) impair or delay the Contractor’s ability to carry out its activities under the Contract;
2. promptly inform the Agent as to (i) any dispute that the Contractor may raise against the Company in connection with the Contract, and (ii) the intention of the Contractor to refer such dispute to an Independent Engineer (in accordance with the relevant provisions of the Contract) and/or the relevant Courts or arbitration panel;

entitle the Agent and the Technical Advisor to witness any performance test carried out in relation to the Contract.

**9. MISCELLANEOUS PROVISIONS**

9.1 Upon duly document request by the Agent, the Company shall keep each Finance Party harmless and indemnified in respect of any loss or liability such Finance Party may incur as a result of this Direct Agreement being executed and/or performed, except in case of fraud (*dolo*) or gross negligence (*colpa grave*) by such Finance Party.

9.2 The Contractor acknowledges that the Company taking any action, granting any consent or notice and/or performing any activity under the Contract may be subject to the Lenders exercising a reserved discretion under the Subscription Agreement.

9.3 The rights of each Party under this Direct Agreement:

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1. may be exercised as many times as necessary it being understood that in case, upon expiry of the Cure Period, the circumstances giving rise to the relevant Contractor’s Notice have remained uncured paragraph 7.1 shall apply;
2. may be exercised cumulatively and, in the event they are a Finance Party’s rights, shall not prejudice any other right of such Finance Party/ies under the Finance Documents and/or applicable laws;
3. may be derogated only upon prior written agreement between all Parties hereto.

9.4 This Direct Agreement shall remain in force until the earlier of:

1. the expiry of the Security Period as confirmed in writing by the Agent to the Contractor with copy to the Company; and
2. the date on which the Contract is fully performed and all the obligations thereunder are fully discharged.

9.5 The Agent shall notify the Contractor as to:

1. an Acceleration being declared; and
2. the occurrence of the circumstances under paragraph 9.4(a) above, within 10 Business Days thereafter.

9.6 In the event an Acceleration is called, the Contractor, within 5 Business Days as of receipt of the relevant notice from the Agent, shall supply to the Agent an outline of (i) all sums due an unpaid to it by the Company as at the date thereof, and (ii) al sums that are expected to become due and payable by the Company under the Contract in the next 120 days, indicating the relevant title.

9.7 Without prejudice to any obligation undertaken by the Company pursuant to this Direct Agreement, the Company hereby acknowledges and agrees upon all provisions hereunder, and expressly undertakes to refrain from taking or omitting any actions, when doing so would impair and/or make more burdensome and/or otherwise adversely affect the ability of any other Party to duly and timely fulfil any of its obligations and/or exercise any of its rights hereunder.

**10. ASSIGNMENT**

10.1 Without prejudice to any stricter provision contained in the Contract, the Contractor shall not assign, apply any novation (*novazione*), transfer or otherwise dispose of its rights under the Contract in favour of any third party, unless:

1. upon prior written consent by the Agent; and
2. conditional upon any prospective assignee or successor in any Contractor’s right towards the Company validly and irrevocably becoming a Party to this Direct Agreement in its entirety, in form and substance satisfactory to the Agent, not later than the relevant assignment or transfer, however named, being effected.

10.2 No Party other than a Finance Party may assign or otherwise transfer this Direct Agreement, the benefit hereunder and/or any rights and/or obligations hereunder. The Lenders and the other Finance Parties may assign or otherwise transfer this Direct Agreement and/or any of its rights and obligations thereunder without any need for any other Party’s consent, also by way of derogation to section 1406 of the Italian Civil Code, to the extent applicable.

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**11. NOTICES**

11.1 Any notice by or to any Party under this Direct Agreement shall be submitted exclusively by means of registered mail, courier, fax or e-mail exclusively to the following addresses or to such different addresses agreed upon in writing between all the Parties, such addresses to be regarded for all purposes as the domicile of the relevant addressee:

1. If to the Lenders (c/o the Agent):

xxxxxx

xxxxxx xxx, Italy

Fax: + xxxxxx

Email: xxxxxx

Attention: xxxxxx

1. If to the Contractor:

**Siemens Gamesa Renewable Energy Wind S.r.l.**

Via Ostiense, 131/L,

00154, Rome, Italy

Fax: + xxxxxx Email: xxxxxx Attention: xxxxxx

1. If to the Company:

**Parco Eolico Casalduni House S.r.l.**

xxxxxx

xxxxxx xxx, Italy

Fax: + xxxxxx

Email: xxxxxx

Attention: xxxxxx

11.2 All notices submitted pursuant to this Direct Agreement shall be deemed as effected:

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1. if by means of registered mail or courier, upon delivery to the relevant addressee, as stated in the relevant delivery receipt;
2. if by means of fax, upon submittal to the above indicated numbers, as stated in the relevant transmission report;
3. if by means of e-mail, upon submittal to the above indicated e-mail addresses, as stated in the relevant delivery message,

provided that they each of the above circumstances occur not later than 5.00 p.m., GMT + 1, of a Business Day. Otherwise, such notices shall be deemed as effected on the immediately following Business Day.

1. **VALIDITY**

In the event any provision or clause of this Direct Agreement is or becomes null, void or otherwise ineffective, this shall not affect the validity and effectiveness of the entire Direct Agreement or of any other clause or provision thereunder.

1. **GOVERNING LAW**

This Direct Agreement shall be governed by the laws of Italy.

1. **JURISDICTION**

The courts of Milan shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Direct Agreement (including any dispute regarding the existence, validity or termination of this Direct Agreement), without prejudice to any mandatory provision under Legislative Decree no. 28/2010.

\*\*\*\*\*\*\*

If you agree with the provisions contained herein, please copy the terms and conditions hereof on headed paper of your company and return it to us signed by your authorised representative.

Yours faithfully,

xxxxxx

(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

xxxxxx

(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)



We hereby express our full and unconditioned acceptance to the above. Yours faithfully,

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**SIEMENS GAMESA RENEWABLE ENERGY WIND SRL.**

1. In case the Assignment is executed before this Direct Agreement, the clause shall be amended to have the Contractor accepting the Assignment as executed. [↑](#footnote-ref-2)