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**Legal Framework for Embedded Production in Ghana**

**Template – Intercompany Loan Agreement**

**Published by:**

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Intercompany loan Agreement

between

[legal name of **German Holding**], a company duly registered under the laws of Germany, having its registered office at [address], represented by [name of representative] in his/her capacity as [position]

hereinafter referred to as the “**Lender**”

and

[legal name of **SPV**], a company duly registered under the laws of Ghana, having its registered office at [address], represented by [name of representative] in his/her capacity as [position]

hereinafter referred to as the “**Borrower**”

also collectively referred to as- the “**Parties**”

**Preamble**

## The Lender is the shareholder of the Borrower. The Borrower intends to construct, operate and maintain a solar photovoltaic electric generation plant in [location of the plant], Ghana to sell the electricity produced to an industrial off-taker according to a power purchase agreement (the “**Project**”).

## In order to fund the Project the Lender is willing to grant a loan to the Borrower.

#

**It is agreed as follows:**

# Loan amount, Effective Date

## The Lender grants a loan to the Borrower in an aggregate amount of up to EUR [...] (hereinafter referred to as the “**Loan**”).

## The Loan starts on the date of the first Loan disbursement to the Borroweraccording to §2.

# Disbursement

## The Loan shall be disbursed upon Borrower´s request. The Borrower shall be permitted to request the disbursement of the Loan in one or more instalments. The disbursement request shall be submitted to the Lender no less than fourteen (14) days before the proposed disbursement date.

## Each disbursement of the Loan shall be made by bank transfer to the bank account previously specified by the Borrower.

## The Borrower shall use the proceeds of the Loan only for the purpose of the Project.

# Interest

## The Loan shall accrue interest on the outstanding balance at an annual rate of […] %.

## Interests shall be calculated on the basis of a 360-day year, comprising 12 months and each month 30 days.

# Repayment and prepayment of the Loan

## The Loan shall be repaid on following bank account [...], at [name of the Bank]:

[Repayment schedule of the Borrower]

## In case of late payment of the interests or the Loan by the Borrower, the interest rate shall be increased by […] percentage points per annum from the date of default without prior notice. The Lender shall reserve the right to claim further compensation.

## The Borrower shall be entitled to prepay the Loan at any time and without prepayment penalty.

# Duration and Termination

## This agreement shall expire after [number of months/years] from the date of the first Loan disbursement. In case of early repayment this agreement shall expire on the day the Loan balance and the interest payable amount to EUR 0,00.

## The Parties shall reserve the right of an extraordinary termination according to §490 BGB (German civil code). A party shall in particular be entitled to extraordinary termination insituations such as insolvency or if there is a material change leading to a complete inability of a Party to comply with the terms of this agreement*.*

## The termination shall be effective only upon written notice.

# Subordination of the Loan

## According to §§ 19 Abs. 2, 39 Abs. 2 InsO (German insolvency act) all obligations of Borrower to Lender shall be subordinated in right of repayment to all obligations of Borrower to all present and future creditors (§ 39 Abs. 1 Nr. 1 bis 5 InsO).

## The Lender undertakes not to enforce its rights against the Borrower as long as the enforcement of its rights result or threaten to result in an over-indebtedness of the Borrower according to § 19 Abs. 2 S. 1 InsO.

# Guarantees

## No Loan guarantees shall be provided.

# Registration of the Loan

The Borrower undertakes to register this agreement according to the Stamp Duty Act of Ghana.

# Applicable Law

## This agreement as well as all related non-contractual obligations shall be governed by the laws of the Federal Republic of Germany. This agreement shall also be subject to the laws of Ghana as may be applicable.*[[1]](#footnote-1)*

# Court of jurisdiction

## The exclusive place of jurisdiction for any dispute or claim arising out of or relating to this agreement shall be [place of jurisdiction of the Lender in Germany].

# Severability

## If any clause of this agreement is ruled invalid or unenforceable by a court of competent jurisdiction, it shall not affect the remainder of the agreement if it can be construed to effect its essential purpose without the invalid clause. If for any reason whatsoever any provision of this agreement is or becomes or is declared by any court to be invalid, illegal or unenforceable, then in any such case the Parties will negotiate in good faith with a view to agreeing one or more provisions to be substituted which are not invalid, illegal, or unenforceable and produce as nearly as is practicable in all the circumstances the appropriate balance of the interests of both Parties in accordance with the spirit and purpose of this agreement. The same provision shall apply in case of any loophole discovered in the implementation of this agreement.

# Amendments

## Amendments to this agreement including to this § 12 must be made in writing and will require legally binding signature by both Parties.

......................, on ..................... ......................, on .....................

................................................... ...................................................

Lender Borrower

1. On the basis that obligations of the Borrower under this agreement will be performed in Ghana, local laws would apply and indeed tax exemptions may be sought, therefore applicable laws of Ghana must be mentioned. [↑](#footnote-ref-1)