

# **LEASE DEED**

(DRAFT)

BY & BETWEEN

ASSAM POWER DISTRIBUTION COMPANY LIMITED

AND

XXXXXXXXX (Solar Power Developer)

Dated: .....

This Lease deed is executed on this [-----] day of [----] 2023 at [Place]

### BY AND BETWEEN

**ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)**, a company incorporated under the Indian Companies Act, 2013 and having its registered office at Bijulee Bhawan, Paltan Bazar, Guwhati-781001, Assam (hereinafter referred to as “Lessor” which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns), of the **FIRST PART**;

### AND

[---], a company incorporated under the Indian Companies Act, [1956/2013] and having its registered office at [---] (hereinafter referred to as “[---]” or “Lessee” which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns), of the **SECOND PART**.

“Lessor & Lessee” shall hereinafter individually be referred to as a “**Party**” and collectively as “**Parties**”.

### WHEREAS

**Assam Power Distribution Company Limited (APDCL) i.e. Lessor got possession of Govt. land measuring to ..... Bigha in village: Khudigaon Pt-II, Bilasipara, in Dhubri District of Assam** with the objective to plan, develop and operate **70 MW<sub>AC</sub>** Solar Power Project.

1. The Lessee has been awarded a project against RFS no. .... and APDCL has recommended to allot plot ..... Bigha for setting up of **70 MW** of solar power project in **village: Khudigaon Pt-II, Bilasipara, in Dhubri District of Assam** being set up by Lessee.

Power Purchase Agreement (**PPA**) was executed between the Lessor and Lessee on [Date] and at the request of the Lessee, to give on Lease the leasehold land admeasuring ..... Bigha, more particularly described in Schedule A of this Lease Deed (hereinafter referred to as “**Lease Land**”) for establishment of **70 MW** power plant based on solar energy sources (“**Solar Power Project**”) for a period of 27 years from the Effective Date of the PPA between Lessor and the Lessee.

### NOW THIS Lease DEED WITNESS AS FOLLOWS:

- 1.1. The Lessor has the Full rights and title to all mines and minerals in/under the Lease Land or any part thereof.
- 1.2. Right to all trees and their branches and roots which exist at the time of lease (which are described in Schedule A attached) as well as those which may grow subsequently on the leased Land and the Lessor shall be at liberty to cut or dig out any such trees or their root and branches and remove them from the Leased Land with the permission of competent authority. However, such activities shall be carried out by personnel authorized officials by the Lessor without affecting the work/project and other interests of the Lessee
2. The Lease is for a period of 27 Years, from the Effective Date of the PPA, unless terminated earlier by either Party in accordance with the terms and conditions set forth herein

3. The Lessor has handed over possession of the Leased Land admeasuring ..... Bigha in village: Khudigaon Pt-II, Bilasipara, in Dhubri District of Assam to the Lessee on .....
4. The Lessee hereby agrees and undertakes to establish Solar Power Project of capacity [70 MW] on the Leased Land as per the provisions of the RfS document
5. Lease Rent

**Charges Payable to APDCL by Solar Power Developers selected by APDCL (70 MW<sub>AC</sub>)**

Sl. No	Description	Charges
1	Annual Land Lease Rent per MW <sub>AC</sub> (with 5% escalation in every year)	<p><b>First Year Lease Rent Charge</b>  <b>The Lease Rent Payable would be INR ..... /- for the plot of ..... Bigha for first year</b> and shall be submitted before signing of PPA.</p> <p>{(Calculated as Value per Bigha of Land of Rs.....-)  X (Area of Sub Leased Land: ..... Bigha) X (5.8 %)}</p> <p><b>For the 2nd Year</b>  The lease rent payable shall be calculated as follows:  {(Value per Bigha of Land of Rs. ....-/-) X (1.05)  X (Area of Leased Land) X (5.8 %)}</p>

**Note:** The above charges are exclusive of GST and other taxes. GST and any other applicable taxes, duties, cess, and other Government levies payable by APDCL are to be reimbursed by SPD as per the prevailing norms from time to time

- 5.1 For every subsequent year, the Lease Rent shall be enhanced at the rate of 5% of the rent paid in the previous year. For each Calendar Year the lease rent shall be paid in advance, within 7 days from the commencement of the financial Year
- 5.2 The Lease Rent excludes all kinds of taxes, Service tax which the Municipal Board, Panchayat or any other civil body and State Government and Central Government may impose during the period of lease in respect of the Leased Land and the Lessee agrees to pay such taxes to the authorities concerned directly under intimation to the Lessor
- 5.3 That the Lease Rent shall be subject to revision by the Lessor if any and as and when done from time to time, in case of any direction from Government of Assam. The Lessee hereby agrees to pay such enhanced rent on account of such revision, if any, to the Lessor.
- 5.4 In case of delay in payment of the Lease Rent, interest at the rate of 15% p.a. shall be charged on the outstanding Lease Rent amount and shall be payable by the Lessee for the number of days the payment is delayed.

**6. Lessee further, hereby covenants with the Lessor as under:**

- 6.1 The Lessee during the period of the Lease may assign his/her/its interest in this Lease Deed to any financial institutions for the purpose of taking loan or establishing or developing the Solar Power Project, such assignment shall be subject to the first charge of Government of Assam.
- 6.2 That the Lessee shall intimate the Lessor of any transfer, take over etc. by way of amalgamation, merger etc. within one month from the date of such transfer, assignments, take over etc. and also take necessary steps with the Lessor to affect the change subject to payment of fees as decided by the Lessor from time to time.
- 6.3 The Lessee shall adhere to the policy for promoting generation of electricity through non-conventional energy sources and shall abide by all the terms and conditions of the Main Lease Deed and all directions issued by the Government of Assam from time to time.
- 6.4 The Lessee shall abide by all the requirements and terms and conditions of the Assam Renewable Energy Policy, 2022 for setting up of Solar Power Plant.
- 6.5 The Lessee shall have no right to further transfer/sublease the rights under this Lease Deed other than for the purposes of availing financial assistance as provided under clause 6.1.
- 6.6 That at the end of the lease period the Lessee shall revert the land to the Lessor free of all encumbrances and without payment of any compensation.
- 6.7 The Lessee agrees not to construct or build any structures or building on the said Leased Land or on a portion of it, which may have the object of using such Leased Land as a commercial undertaking other than for the Solar Power Project.
- 6.8 In case the Lessee, (a) uses the Leased Land for any other purposes other than for establishment of Solar Power Project; or (b) commits any default or breach of any other conditions of the Lease Deed; or (c) commits an event of default under the PPA; or (d) fails to pay the Lease Rent in accordance with Clause 5 of this Lease Deed; or (e) commits an event of default under the PPA, then the Lessor shall issue a notice of default to the Lessee and forward a copy of such default notice to Govt. of Assam and the lenders/financial institutions which have provided debt facilities to the Solar Power Project. The lenders /financial institutions which have provided debt facilities to the Solar Power Project upon receipt of the notice from the Lessor may exercise their right under the PPA and/or the financing agreements. If the default is not cured the lenders/financial institutions which have provided debt facilities to the Solar Power Project have failed to exercise their right under the PPA and/or the financing agreements, this Lease Deed shall stand cancelled and the Leased Land will revert to Lessor free from all encumbrances and without payment of any compensation for pre mature termination of the Lease Deed.

Upon termination of this Lease Deed, the Lessee shall remove from the Leased Land all buildings and structures constructed by him thereon and hand over the peaceful vacant possession of the Leased Land back to the Lessor not later than [60] days from the date of termination of this Lease Deed. In case the Lessee fails to do so, the Government of Assam and/or the Lessor in addition to rights available to it under this Lease Deed shall also have a right to dispose of the said structures or building in any manner as it deems fit and proper at Lessee costs and expenses.

## **7. Governing Law**

- 7.1 This Lease Deed shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this -Lease Deed shall be under the jurisdiction of appropriate courts in Guwahati, India

## **8. Dispute Resolution and Arbitration**

- 8.1 Dispute Resolution through Amicable Settlement: In the event of a dispute between the Parties arising out of or in connection with this Lease Deed, the Parties shall mutually discuss and endeavor to amicably resolve such dispute within 30 days.
- 8.2 If the Parties are unable to resolve any dispute, controversy or claim relating to or arising under this Lease Deed, as stated above, the same shall be referred to APDCL for resolution of the dispute. APDCL upon hearing the Parties shall provide its decision within 30 (thirty) days from the date the dispute was referred to APDCL. In the event any Party is aggrieved by the decision of APDCL, such aggrieved party shall have the right to refer the matter to arbitration.
- 8.3 Disputes referred to arbitration shall be conducted by a panel consisting of three (3) arbitrators ("**Arbitration Tribunal**"). The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015. Each party shall appoint one arbitrator within 30 days of the receipt of request for settlement of dispute by arbitration. The two appointed arbitrators shall within 30 days of their appointment, jointly identify and appoint a third arbitrator who shall act as a presiding arbitrator. In case a party fails to appoint an arbitrator within the time lines provided or the presiding arbitrator is not appointed within the time lines provided for his/ her appointment, the appointment of arbitrators shall be made in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015.
- 8.4 During the pendency of any Dispute, both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Lease Deed and shall not, whether by act or omission, impede or otherwise interfere with the endeavor of the defaulting Party to remedy the Non-Compliance or default to which such Dispute relates.
- 8.5 The award of the Arbitral Tribunal shall be final and binding on the Parties.

## **9. Notice**

- 9.1 Any notice required or permitted under the terms of this Lease Deed or required by Applicable Law shall (unless otherwise agreed) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by facsimile to the respective parties as follows:

The Lessor:

\_\_\_\_\_

Attention: \_\_\_\_\_

Fax No.: \_\_\_\_\_

The Lessee:

\_\_\_\_\_

Attention:

Fax No.:

## **10. Indemnity**

### **10.1 Indemnification by Lessee**

The Lessee shall indemnify, defend and hold harmless Lessor and its shareholders, managers, officers, directors and employees (each a **Lessor Indemnified Party**) within 30 (thirty) days of receiving demand from the Lessor at any time and from time to time, from and against any and all direct losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively, "**Lessor Losses**") incurred by a Lessor Indemnified Party, attributable to the Lessee insofar as such Lessor Losses directly arise out of, in any way relate to, or result from:

- a) the failure by Lessee to fulfill any covenant or condition contained in this Lease Deed, including without limitation the breach of any terms and conditions of this Lease Deed by Lessee, or
- b) any claim or proceeding by any third party against Lessor arising out of any act, deed or omission by the Lessee.

### **10.2 Indemnification by Lessor**

The Lessor shall indemnify, defend and hold harmless Lessee and its shareholders, managers, officers, directors and employees (each a "**Lessee Indemnified Party**") within 30 (thirty) days of receiving demand from the Lessee at any time and from time to time, from and against any and all direct losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively, "**Lessee Losses**") incurred by a Lessee Indemnified Party, attributable to the Lessor insofar as such Lessee Losses directly arise out of, in any way relate to, or result from:

- a) the failure by Lessor to fulfill any covenant or condition contained in this Lease Deed, including without limitation the breach of any terms and conditions of this Lease Deed by Lessor, or
- b) any claim or proceeding by any third party against Lessee arising out of any act, deed or omission by the Lessor.

### **10.3 Limitation on Liability**

Except as expressly provided in this Lease Deed, neither the Lessor nor the Lessee nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Lease Deed, or anything done in connection herewith, including claims

in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Lease Deed), any increased expense of, reduction in or loss of power generation, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Lessor, the Lessee or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

**10.4** The Indemnified Parties shall not be entitled to claim indemnity more than once for the same Loss

**10.5** Duty to Mitigate

The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Clause 10.

In witness whereof, the parties hereto have set and subscribed their respective hands on the dates mentioned against their signature.

For and on behalf of by its _____ (Designation) Name  Signature	For and on behalf of by its _____ (Designation) Name  Signature
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**Annexure – 1**

[Details of the Land Parcel being leased]