

**REQUEST FOR PROPOSAL**

**Volume II: Technical Services Agreement for Strategic Partner**

**Nucleus Breeding Centre (NBC) for *L. vannamei* at Kanyakumari**

**Rajiv Gandhi Centre for Aquaculture, Marine Products Export Development Authority,  
Ministry of Commerce and Industry, Government of India**

*Address: 3/197, Poompuhar Road, Karaimedu Village, Sattanathapuram Post, Sirkali Taluk,  
Nagapattinam District, Tamil Nadu 609109*

**Date: December 2019**

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## Technical Services Agreement

This Technical Services Agreement (hereinafter referred to as this “**Agreement**”) is made and entered into at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between:

**Rajiv Gandhi Centre for Aquaculture (RGCA)**, a society registered under the Tamil Nadu Societies Registration Act, 1975 and operating under the aegis of Marine Products Export Development Authority and having its principal office at [\*\*\*] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the **First Part**;

**AND**

{[\*\*\*], a [company/any other relevant entity] incorporated under the provisions of [\*\*\*] and having its registered office at [\*\*\*], (hereinafter referred to as the “**Strategic Partner**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Second Part**.}<sup>1</sup>

**OR**

{[\*\*\*], being the Lead Member, being a [company/any other relevant entity] incorporated under the provisions of [\*\*\*] and having its registered office at [\*\*\*] and acting for and on behalf of the Consortium, comprising of itself and [.....], a [company/ any other entity] incorporated under the provisions of [\*\*\*] and having its registered office at [\*\*\*] (Consortium being hereinafter referred to as the “**Strategic Partner**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Second Part**}<sup>2</sup>

The Authority and the Strategic Partner shall individually be referred to as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS**

- A. The Authority is an autonomous society registered under the Tamil Nadu Societies Registration Act, 1975 functioning under the aegis of the Marine Products Export Development Authority (“**MPEDA**”) which in turn is a statutory body under the aegis of the Ministry of Commerce and Industry, Government of India with the

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<sup>1</sup> To be used in case the Strategic Partner is a single entity and the second option below to be removed.

<sup>2</sup> To be used only if the Strategic Partner is a Consortium of entities and the first option above shall be removed.

Authority having been established to conduct research and developmental activities in respect of aquatic animals.

- B. The Authority and MPEDA are dedicated towards improving yield in shrimp cultivation as well as increasing the export of *L. vannamei* shrimp from India and to this end, the Authority and MPEDA are proposing the creation of a nucleus breeding program for *L. vannamei* shrimp, in India;
- C. The Authority and MPEDA, as part of India's first nucleus breeding programme, now seek to establish and start operating a Nucleus Breeding Centre (NBC) (*defined hereafter*) specifically for *L. vannamei* at the Site (*defined hereafter*) (hereinafter referred to as the "**Project**");
- D. The Authority had invited proposals vide Request for Proposal Document No. \_\_\_ dated [\*\*\*] (the "**RFP**") for appointment of a Strategic Partner for providing the Services (*defined hereafter*) in connection with the Project;
- E. After evaluation of the Bid(s) (*defined hereafter*) received, the Authority had accepted the Bid of the Strategic Partner and issued a letter of acceptance No. [\*\*\*] dated [\*\*\*] (the "**LOA**") to the Strategic Partner requiring, *inter alia*, the execution of this Agreement;
- F. The Strategic Partner has agreed to undertake and perform its obligations with respect to the Project, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 32) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### **1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, Government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

- (g) any reference to day shall mean a reference to a calendar day;
- (h) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Kochi, Kerala are generally open for business;
- (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) references to any date, period or project milestone shall mean and include such date, period or project milestone as may be extended pursuant to this Agreement;
- (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh” means a hundred thousand (1,00,000) and “crore” means ten million (10,000,000);
- (o) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (q) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended,

varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (u) the Damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Strategic Partner to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.3 **Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

#### **1.4 Priority of agreements and errors/discrepancies**

1.4.1 This Agreement, and all other addenda and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and addenda forming part hereof shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other addenda and documents forming part hereof;

i.e. the Agreement at (a) above shall prevail over the addenda and documents at (b) above.

1.4.2 Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail.

#### **1.5 Confirming Parties**

In case the Strategic Partner is a Consortium of entities, this Agreement shall be executed through the Lead Member of the Consortium, who shall be primarily responsible for performance of all the obligations under this Agreement. Notwithstanding, anything contained anywhere in this Agreement, the Strategic Partner agrees that irrespective of the Lead Member acting for and on behalf of the Consortium, all the other members of the Consortium shall be jointly and severally



liable towards the Authority for the performance of all obligations under this Agreement. The other members of the Consortium besides the Lead Member are executing this Agreement as confirming parties, hereto.

#### 1.6 **Conversion of Currencies**

For the purpose of this Agreement, for the conversion of US Dollars to Indian Rupees, the rate of conversion shall be INR 70 to a US Dollar.

## ARTICLE 2: SCOPE OF SERVICES

### 2.1 Scope of Services

The services to be performed by the Strategic Partner in connection with the Project (“**Services**”) and the timelines thereof, have been set out in detail in Schedule A of this Agreement (“**Scope of Services**”). The Services that are to be performed by the Strategic Partner are as follows:

- a) Providing the Services in accordance with the Scope of Services and in conformity with the terms of this Agreement, Applicable Laws and Good Industry Practice;
- b) Preparing and submitting the Concept Design, during the Design Phase, for the purpose of designing the NBC and such Concept Design shall necessarily include the details set out and prescribed in Schedule A;
- c) Preparing protocols, manuals, standard operating procedures on the parameters and topics mentioned in Schedule A so as to facilitate the nucleus breeding activities to be undertaken as part of the Project;
- d) Review of DPR prepared by the Engineering Consultant appointed by the Authority so as to ensure that the DPR is in conformity with the Concept Design prepared by the Strategic Partner;
- e) Ensuring supply and import of SPF-SPT post larvae (PL) of *L. vannamei* shrimps in the manner, method and quantity specified in Article 15 and Schedule A during the Supply Phase;
- f) Ensuring that the supply and import of the SPF-SPT PL of *L. vannamei* shrimps during the Supply Phase takes place in compliance with Applicable Laws and Applicable Permits *inter alia* sanitary, phytosanitary and quarantine standards and regulatory approvals as prescribed by the Government of India, from time to time;
- g) Operating the NBC and performing the activities specified in the Operations Phase in Schedule A, *inter alia* the selective breeding, field trial and growout activities in coordination and cooperation with the Authority, and ensuring that the Services provided in the Operations Phase are in compliance with the terms of this Agreement including, the Scope of Services set forth in Part C of Schedule A;

- h) Deploying the required personnel during Operations Phase I as specified in Article 14 and Schedule A in order to ensure that the selective breeding activities and other Services contemplated under this Agreement are fulfilled;
- i) Monitoring the research and development activities taking place at the NBC as well as holding half-yearly review meetings during the Operations Phase with the Authority, MPEDA and the Independent Committee so as to ensure all queries, problems, issues and grievances raised by the Authority, Independent Committee and MPEDA are adequately resolved and answered;
- j) Provide the required number of training sessions to the personnel of the Authority on the aspects and topics specified and set out in Schedule A during the Term of this Agreement and in accordance with the timelines and frequency set out in Article 14;
- k) Supervising the selective breeding program for *L. vannamei* in co-ordination and co-operation with the Authority and MPEDA so as to ensure supply of at least 30 (thirty) separate, least inbreeding shrimp families two years prior to the expiry of the Term, along with transfer of the Pedigree Data for such 30 (thirty) families in the manner specified in this Agreement;
- l) Complying with all other obligations and submitting all other deliverables as specified in Schedule A in accordance with the timelines set forth therein as well as endeavour to complete all Milestones within the Scheduled Milestone Completion Dates as set out in Schedule C; and
- m) Performing all activities which are incidental or related to the Scope of Services set out under this Agreement.

## **ARTICLE 3: TERM OF AGREEMENT**

### **3.1 Term**

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, Applicable Permits and Good Industry Practice, the Authority hereby appoints the Strategic Partner and the Strategic Partner hereby agrees to perform the Services set out in Article 2 and in Schedule A, in connection with this Project.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Strategic Partner shall provide the Services set out in Schedule A during the undermentioned Phases:

- (a) Supply Phase: A period commencing from the Effective Date and ending upon the Commissioning of the NBC. Subject to Clause 3.1.5, the stipulated date for Commissioning of the NBC for the purpose of this Agreement shall be 3 (three) years from the Effective Date;
- (b) Design Phase: A period commencing from the Effective Date and ending upon completion of six months from the Effective Date or the approval of the DPR submitted by the Engineering Consultant, whichever occurs earlier;
- (c) Operations Phase I: A period commencing from the date of Commissioning of the NBC till the completion of 2 (two) years from the date of Commissioning of the NBC and during which period the personnel of the Strategic Partner shall be mandatorily deployed at the Site in accordance with the requirements specified in Article 14;
- (d) Operations Phase II: A period commencing from the date of completion of Operations Phase I as specified in (c) above till the completion of the Term.

3.1.3 The term of the Agreement shall commence from the Effective Date and shall, subject to Clause 3.1.4 below, end upon completion of 9 (nine) years from the Effective Date, unless otherwise extended in accordance with the provisions of this Agreement, or unless this Agreement is terminated earlier by the Parties, by issuance of a Termination Notice by any Party in accordance with Article 25 (hereinafter referred to as the “**Term**”).

#### **3.1.4 Extension of Term**

Prior to the expiry of the Term, the Authority may choose to extend the initial Term of this Agreement by a maximum of additional 10 (ten) years on

substantially the same terms and conditions as contained in this Agreement, subject to the following:

- a) The Authority shall intimate the Strategic Partner about its decision to engage the Strategic Partner for the grant of another term, at least 6 (six) months prior to the completion of the initial Term i.e. 6 (six) months prior to the completion of the 6<sup>th</sup> (sixth) year from the Commissioning of the NBC;
- b) The Authority shall only exercise the option of extending the Term if it is satisfied that the Strategic Partner has not committed any Strategic Partner Default in the 2 (two) years preceding the date of decision by the Authority to grant the extension of the Term.

The Parties shall mutually decide upon any additional obligations and Services which may be required to be provided by the Strategic Partner during the extended term.

Provided further, any payment of additional costs and fees to the Strategic Partner, including the revision of all Fees payable under this Agreement, owing to provision of additional Services by the Strategic Partner if the Term is extended, upon the instruction of the Authority, shall be discussed mutually between the Parties and a mutually agreed financial arrangement shall be arrived at. These mutual discussions shall take place at the time the Authority takes the decision to extend the Term of the Agreement i.e. engage the Strategic Partner for the extended term.

### 3.1.5 **Supply Phase Long Stop Period**

The Parties hereby agree that the stipulated time period for the Supply Phase is three years from the Effective Date within which time the Commissioning of the NBC is scheduled to be completed. However, in the instance that the Commissioning of the NBC is not achieved, due to any other reason other than a Strategic Partner Default, within three years from the Effective Date, then the Supply Phase and the relevant supply obligations of the Strategic Partner as specified in Article 15 and Schedule A shall be extended and be made applicable for one (1) additional year (“**Supply Phase Long Stop Period**”).

Provided however if the Commissioning of the NBC is also not achieved within the Supply Phase Long Stop Period due to any other reason other than a Strategic Partner Default, then this Agreement shall be terminated, and the consequences set out under Article 25 shall follow.

It is hereby clarified that during the Supply Phase Long Stop Period, the terms of payment to the Strategic Partner for fulfilment of its supply obligations would be mutually decided between the Parties.

## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

- 4.1.1 Save and except as otherwise, expressly provided in Articles 1, 7, 8, 23, 27, 28, 29, 30, 31 and 32 of this Agreement, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4 (“**Conditions Precedent**”).
- 4.1.2 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Each Party shall promptly inform the other Party when any Conditions Precedent for which it is responsible has been satisfied.
- 4.1.3 Subject to Clause 4.1.7 below, the Conditions Precedent required to be satisfied by the Strategic Partner within a period of 30 (thirty) days from the date of execution of this Agreement shall be deemed to have been fulfilled when the Strategic Partner shall have:
- a) Provided the Performance Security to the Authority as per the format and terms of this Agreement; and
  - b) Delivered to the Authority, a confirmation of the correctness of the representations and warranties set forth in Clause 7.1.
- 4.1.4 Subject to Clause 4.1.8 below, the Conditions Precedent required to be satisfied by the Authority within a period of 30 (thirty) days from the date of execution of this Agreement shall be deemed to have been fulfilled when the Authority shall have:
- a) Procured and ensured that the Strategic Partner has been provided with access to the Site, in accordance with Article 10, so as to provide the Services in a seamless manner; and
  - b) Appointed the Engineering Consultant.
- 4.1.5 Upon request in writing by any of the Parties, the other Party may, in its discretion, waive any of the Conditions Precedent set forth in Clauses 4.1.3 or 4.1.4, above, or permit additional time to meet any of the Conditions Precedent set forth herein provided however that such Party issues a notice to the other Party prior to the expiry of the prescribed time period for fulfilment of the Conditions Precedent, as stated in Clauses 4.1.3 and 4.1.4 above, by such other Party (“**CP Waiver Notice**”), stating that:

- a. the Condition(s) Precedent is being waived; or
- b. the number of days by which the time period for fulfilment of any one or more of the Conditions Precedent is being extended, as the case may be.

4.1.6 Subject to Clause 4.1.5 above, the date on which the last of the Conditions Precedent as set out in Clauses 4.1.3 and 4.1.4, above, are satisfied by the Party responsible for satisfying such Conditions Precedent, shall be declared as the “**Effective Date**” for the purpose of this Agreement.

4.1.7 In the event that (i) the Strategic Partner does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred solely as a result of failure of the Authority to fulfil its Conditions Precedent under Clause 4.1.4 or other breach of this Agreement by the Authority or due to Force Majeure, the Strategic Partner shall pay to the Authority, Damages of an amount calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 10% (ten percent) of the Performance Security and upon reaching such maximum threshold, the Authority may, in its sole discretion and subject to Article 9, terminate this Agreement or provide further extension subject to the payment of Damages as defined in this Clause.

4.1.8 In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.4 within the period specified in that Clause, and (ii) the delay has not occurred solely as a result of the Strategic Partner’s failure to fulfil its Conditions Precedent under Clause 4.1.3 or other breach of this Agreement by the Strategic Partner or due to Force Majeure, the Authority shall pay to the Strategic Partner, Damages of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 10% (ten percent) of the Performance Security, and upon reaching such maximum threshold, the Strategic Partner may, in its sole discretion, terminate this Agreement.

## **4.2 Consequences of Termination due to non-fulfilment of Conditions Precedent**

4.2.1 Notwithstanding anything contained in this Agreement, in the event of termination by the Strategic Partner due to the Authority’s failure to fulfil the Conditions Precedent, the Authority shall within 7 (seven) days of Termination



Notice, return the Bid Security (if Performance Security is not furnished), or the Performance Security (if the Bid Security has been replaced by furnishing of the Performance Security), as the case may be, and thereupon all rights, privileges, claims and entitlements of the Strategic Partner under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Strategic Partner.

- 4.2.2 Notwithstanding anything contained in this Agreement, in the event of termination by the Authority due to the Strategic Partner's failure to fulfil the Conditions Precedent, the Authority may encash the Bid Security (if Performance Security has not been furnished) or, in case the Performance Security has been furnished, replacing the Bid Security, encash an amount equal to the Bid Security value from such Performance Security, and thereupon all rights, privileges, claims and entitlements of the Strategic Partner under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Strategic Partner.

## **ARTICLE 5: OBLIGATIONS OF THE STRATEGIC PARTNER**

### **5.1 General Obligations of the Strategic Partner**

- 5.1.1 Subject to and on the terms and conditions set forth in this Agreement, the Strategic Partner shall at its cost and expense undertake to provide the agreed Services with respect to the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Strategic Partner shall comply with all Applicable Laws and Applicable Permits (including renewals as required) for the performance of its obligations and the Services under this Agreement.
- 5.1.3 Subject to Clauses 5.1.1 and 5.1.2 above, the Strategic Partner shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent service provider and shall complete the Services in accordance with the timelines specified in Schedule C.
- 5.1.4 The Strategic Partner hereby accepts and agrees to discharge obligations herein and provide the Services, subject to and in accordance with the terms and conditions set forth herein.
- 5.1.5 Subject to and in accordance with the provisions of this Agreement, the Strategic Partner shall be obliged or entitled (as the case may be) to:
- (a) Right of access to the Site of the Project by way of grant of license for the purpose of performing and fulfilling all of the Strategic Partner's obligations under this Agreement;
  - (b) Perform the Services as per the terms and conditions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (c) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations and the Services of the Strategic Partner under this Agreement;
  - (d) Demand, charge, retain and appropriate the Fees specified under this Agreement and in accordance with the provisions of this Agreement;
  - (e) Not assign this Agreement;

- (f) Exercise such other rights and obligations as the Authority may determine as being necessary or desirable for the purpose incidental and necessary for implementing the Project.

5.1.6 The Strategic Partner shall, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (b) deploy the requisite trained personnel with the relevant qualifications and experience at the Site during the Operations Phase I, as per the requirements specified in Article 14 and Schedule A;
- (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for providing the Services for the Project;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Subcontractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Subcontractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Strategic Partner's obligations under this Agreement;
- (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (h) prepare the required drafts of the Concept Design and submit the relevant SOPs and manuals during the Design Phase, as specifically set out in Schedule A;
- (i) review the DPR prepared by the Engineering Consultant appointed by the Authority to ensure compliance with the Concept Design, during the Design Phase;

- (j) import and supply to the Authority, the requisite number of SPF-SPT (PL) of *L. vannamei* shrimps to India, prior to and, if required, after the Commissioning of the NBC, as stipulated in Schedule A and Article 15, in accordance with Applicable Laws, Applicable Permits including but not limited to any sanitary and phytosanitary standards prescribed by the Government of India;
- (k) performs its specific obligations during the Operations Phase, including but not limited to the selective breeding activities and field trials, as described extensively and stipulated in Schedule A;
- (l) ensure that upon the completion of the fourth year of the Operations Phase, in association with the Authority, it supplies and develops at least 30 (thirty) distinct least inbreeding families of *L. vannamei* shrimp at the NBC along with the Pedigree Data for at least 30 (thirty) distinct least inbreeding families, for further selective breeding by the Authority post the expiry of the Term of this Agreement;
- (m) grant a non-exclusive, irrevocable, royalty free license, in accordance with Article 22 of this Agreement, to the Authority to use the Intellectual Property rights, if any, as well as share technical know-how and other related Documentation and data with the Authority only to the extent necessary for the provision of Services by the Strategic Partner under this Agreement.

Notwithstanding anything contained in this Clause 5.1, it is hereby agreed upon between the Parties that the above obligations are general in nature and shall be in addition to and not in derogation of the specific obligations which are to be fulfilled by the Strategic Partner in accordance with the other provisions of this Agreement.

## **5.2 Obligations relating to the Agreement**

- 5.2.1 It is expressly agreed that the Strategic Partner shall, at all times, be responsible and liable for all its obligations under this Agreement and no default under any agreement shall excuse the Strategic Partner from its obligations or liability hereunder.
- 5.2.2 The Strategic Partner shall exercise all reasonable skill, care and diligence to be expected of a properly qualified professional who has held itself out as suitable and competent to perform the Services under this Agreement and who is

experienced in providing services similar to the Services in relation to the Project.

### **5.3 Employment of foreign nationals**

The Strategic Partner acknowledges, agrees and undertakes that employment of foreign personnel by the Strategic Partner and/or its Sub- contractors shall be subject to grant of requisite regulatory permits and approvals, including employment/residential visas and work permits required, if any, and the obligation to apply for and obtain the same shall and will always be of the Strategic Partner and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Strategic Partner or any of its Subcontractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Strategic Partner from the performance and discharge of its obligations and liabilities under this Agreement.

### **5.4 Employment of Trained Personnel**

The Strategic Partner shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions and Services required to be performed in each Phase, as specified in Schedule A. The minimum qualifications and experience required for the personnel to be deployed during Operations Phase I has been specified in Schedule A.

For the avoidance of doubt, the Strategic Partner shall at all times be wholly responsible for and in respect of its dealings with Subcontractors or third parties; and shall fully indemnify the Authority in respect of any claim, proceedings, actions, losses arising in connection thereof or in relation thereto.

The Strategic Partner shall, in respect of the personnel employed by it either directly or through any of its Subcontractors for execution of the Services, comply with all Applicable Laws for such employment, dealing with labour matters. The Strategic Partner shall provide and maintain all necessary welfare facilities etc. for its personnel and employees of its Subcontractors in accordance with the Applicable Laws.

### **5.5 Audited Accounts**

- 5.5.1 The Strategic Partner shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this

Agreement, Good Industry Practice, Applicable Laws and Applicable Permits with respect to accounting for the Services provided under this Agreement.

- 5.5.2 The Authority shall have the right to inspect the records of the Strategic Partner during office hours and request for copies of relevant extracts of books of accounts as per Applicable Laws.
- 5.6. The Strategic Partner agrees to perform the Services and do all other things required/considered prudent so to do, in relation thereto, in accordance with the provisions of this Agreement. All employees, representatives or Subcontractors (if any) engaged by the Strategic Partner in connection with the performance of its Services and obligations under this Agreement will be under the complete control of the Strategic Partner and will not be deemed to be employees of the Authority, and nothing contained in this Agreement or in any sub-contract awarded by the Strategic Partner will be construed to create any contractual relationship between any such employees, representatives or Sub-contractor and the Authority.
- 5.7 In addition to and not in derogation of anything else contained in this Agreement, the Strategic Partner shall ensure that while performing the Services set out under this Agreement it shall at all times comply with Applicable Laws and specifically with all applicable environmental laws, rules and regulations, as amended from time to time.

## ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

### 6.1 General Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense, undertake, comply with, and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Strategic Partner and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- (a) upon written request from the Strategic Partner, and subject to the Strategic Partner complying with Applicable Laws, provide all reasonable support and assistance to the Strategic Partner in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project, , including but not limited to assistance in the procurement of any sanitary, phytosanitary and quarantine approvals as may be necessary under Applicable Laws for the purpose of supply of SPF-SPT PL of *L. vannamei* shrimps;
- (b) undertake to coordinate with the concerned authorities and other departments to issue appropriate instructions to the field officers of these departments for making available required assistance and resources to the Strategic Partner towards the discharge of its obligations as per this Agreement;
- (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (d) support, cooperate with and discharge its obligations to facilitate the Strategic Partner in performing its obligations in accordance with the provisions of this Agreement;
- (e) upon written request from the Strategic Partner, provide reasonable assistance to the Strategic Partner or its Subcontractors to obtain applicable visas and work permits for the purposes of discharge by the Strategic Partner or of its Subcontractors of their obligations under this Agreement;
- (f) ensure timely payment of all Fee to the Strategic Partner in accordance with the provisions of this Agreement;

- (g) ensure that all the Applicable Permits and other regulatory approvals, if any are required and which may be necessary for supply of the SPF-SPT PL of *L. vannamei* shrimps are in place during the Term of this Agreement;
- (h) ensure that there is no breach of Confidential Information and also ensure that the Intellectual Property rights, technical know-how, Documentation and data provided by the Strategic Partner as part of the Services, are utilized only for the objective of this Project and is not utilized and implemented elsewhere in any manner whatsoever;
- (i) ensure that the Engineering Consultant is appointed within the Effective Date of this Agreement;
- (j) ensure that the Construction Agency is appointed within two months from completion of the Design Phase;
- (k) ensure on a best effort basis that the Construction Agency completes construction of the NBC within 2 (two) years of its appointment;
- (l) ensure that the construction of the NBC by the Construction Agency is in compliance with the Concept Design prepared by the Strategic Partner and approved by the Authority, and the designs and drawings prepared by the Engineering Consultant and approved by the Authority and Strategic Partner;
- (m) provide all reasonable assistance to the Strategic Partner during the course of the Operations Phase with respect to the selective breeding activities that shall take place at the Site of the NBC; and
- (n) endeavour to provide timely approval to the Concept Design, and any other deliverable as stipulated in Schedule A or elsewhere in this Agreement so as to ensure that the Strategic Partner may be able to complete the Services and obligations in conformity with the timelines set out in Schedule C-.



## **ARTICLE 7: REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties of the Strategic Partner**

The Strategic Partner represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India or the laws of its country of incorporation and registration, as the case may be, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the qualifications, experience, financial standing and capacity to undertake the Project including conducting the operation of the NBC and discharging obligations hereunder, in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or against matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its charter documents, including but not limited to its Memorandum of Association or Articles of Association, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to

which it is a party or by which it or any of its properties or assets are bound or affected;

- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
- (l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Project or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority or MPEDA in connection therewith.

## **7.2 Representations and Warranties of the Authority**

The Authority represents and warrants to the Strategic Partner that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by it in the RFP and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (i) upon the Strategic Partner submitting the Performance Security and performing the covenants herein, it shall not at any time during the Term hereof, interfere with the peaceful exercise of the rights and discharge of the obligations by the Strategic Partner, in accordance with this Agreement.

### **7.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of the Parties that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of the Parties under this Agreement.

## **ARTICLE 8: DISCLAIMER**

### **8.1 Disclaimer**

- 8.1.1 The Strategic Partner acknowledges that prior to the execution of this Agreement, the Strategic Partner has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of Services, local conditions, Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Strategic Partner confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Strategic Partner acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Strategic Partner or any person claiming through or under any of them.

## **ARTICLE 9: PERFORMANCE SECURITY AND PERFORMANCE GUARANTEE**

### **9.1 Performance Security**

The Strategic Partner shall, for the performance of its obligations hereunder during the Design Phase, provide to the Authority no later than 15 (fifteen) days from the execution of this Agreement, an irrevocable and unconditional bank guarantee from a Bank for a sum equivalent to USD [\*\*\*/]INR [\*\*\*/] (United States Dollars \*\*\* only/ Indian Rupees \*\*\* only) (10% of the Lump Sum Fee for the services to be provided during Design Phase as quoted in the Financial Bid) in the form set forth in Part A of Schedule E (“**Performance Security**”). Until such time the Performance Security is provided by the Strategic Partner pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Strategic Partner.

### **9.2 Appropriation of Performance Security**

Upon occurrence of failure to meet any Design Phase related obligation, as specified in this Agreement, or failure to fulfil the Conditions Precedent post the furnishing of Performance Security, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages as per the rate specified in this Agreement or to the extent of loss, damage and cost incurred by it as result thereof in its sole estimation. Upon such encashment and appropriation from the Performance Security, the Strategic Partner shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be, within the time so granted, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 25. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Strategic Partner shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the default for which the Performance Security was appropriated, and in the event of the Strategic Partner not curing such default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 25.

### **9.3 Release of Performance Security**

The Performance Security shall be provided within 30 (thirty) days of execution of this Agreement, as mentioned in Clause 9.1, and shall remain in force and effect

for a period of 60 (sixty) days post the Completion of Design Phase (“**Performance Security Period**”).

#### **9.4 Operations Phase I Performance Guarantee**

The Strategic Partner shall, for the performance of its obligations hereunder during the Operations Phase I, provide to the Authority no later than 30 (thirty) days prior to the Commissioning of the NBC, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to USD/INR [\*\*\*] (United States Dollars/ Indian Rupees \*\*\* only) (equivalent to value of 2 months’ Monthly Fee for Operations Phase I as quoted in the Financial Bid) in the form set forth in Part B of Schedule E (the “**Operations Phase I Performance Guarantee**”).

#### **9.5 Appropriation of Operations Phase I Performance Guarantee**

- a) Upon occurrence of an event of Deficiency by the Strategic Partner during the Operations Phase I Performance Guarantee Period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts (by way of loss, costs, damages suffered as a result of such default), from the relevant instalment of the Monthly Fee for Operations Phase I payable hereunder and/or the Operations Phase I Performance Guarantee, as Damages suffered in connection with occurrence of such Deficiency.
- b) Without any prejudice to the terms of this Clause 9.5 and in addition to the Damages specified in sub clause a) above, in case of non-remedy of the Deficiency by the Strategic Partner, within the Cure Period specified in Clause 12.6, Damages as spelt out and enumerated in Clause 12.6 shall be payable on a per day basis by the Strategic Partner in accordance with the procedure set forth in Clause 12.6.
- c) Upon such encashment and appropriation from the Operations Phase I Performance Guarantee, the Strategic Partner shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Operations Phase I Performance Guarantee, and in case of appropriation of the entire Operations Phase I Performance Guarantee provide a fresh Operations Phase I Performance Guarantee, as the case may be, within the time so granted, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 25.

#### **9.6 Release of Operations Phase I Performance Guarantee**

The Operations Phase I Performance Guarantee shall remain in force and effect from the time mentioned in Clause 9.4 and subject to provisions of Clause 9.5, shall be released upon submission of the Operations Phase II Performance Guarantee (“**Operations Phase I Performance Guarantee Period**”).

### **9.7 Operations Phase II Performance Guarantee**

The Strategic Partner shall, for the performance of its obligations hereunder during the Operations Phase II, provide to the Authority no later than 30 (thirty) days prior to the completion of Operations Phase I, an irrevocable and unconditional bank guarantee from a Bank for a sum equivalent to USD/INR [\*\*\*] (United States Dollars/ Indian Rupees \*\*\* only) (equivalent to value of 2 months’ Monthly Fee for Operations Phase II as quoted in the Financial Bid) in the form set forth in Part C of Schedule E (the “**Operations Phase II Performance Guarantee**”).

### **9.8 Appropriation of Operations Phase II Performance Guarantee**

- a) Upon occurrence of an event of Deficiency by the Strategic Partner during the Operations Phase II Guarantee Period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts (incurred as related costs, damages, losses) from the relevant instalment of the Monthly Fee for Operations Phase II payable hereunder and/or the Operations Phase II Performance Guarantee, as Damages for such event of Deficiency.
- b) Without any prejudice to the terms of this Clause 9.8 and in addition to the Damages specified in sub clause a) above, in case of non-remedy of the Deficiency by the Strategic Partner, within the Cure Period specified in Clause 12.6, Damages as spelt out and enumerated in Clause 12.6 shall be payable on a per day basis by the Strategic Partner in accordance with the procedure set forth in Clause 12.6.
- c) Upon such encashment and appropriation from the Operations Phase II Performance Guarantee, the Strategic Partner shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Operations Phase II Performance Guarantee, and in case of appropriation of the entire Operations Phase II Performance Guarantee provide a fresh Operations Phase II Performance Guarantee, as the case may be, within the time so granted, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 25.

### **9.9 Release of Operations Phase II Performance Guarantee**



The Operations Phase II Performance Guarantee shall remain in force and effect from the time mentioned in Clause 9.7 and subject to provisions of Clause 9.8, shall be released upon completion of 60 (sixty) days from the completion of the Term (**“Operations Phase II Performance Guarantee Period”**).

For the purpose of this Agreement, the Operations Phase I Performance Guarantee and the Operations Phase II Performance Guarantee shall both be referred to as **“Performance Guarantee”** and shall refer to the either the Operations Phase I Performance Guarantee or Operations Phase II Performance Guarantee, as the context may so require.

## **ARTICLE 10: SITE**

### **10.1 Right of Way**

10.1.1 For the purpose of this Agreement and the covenants and warranties on the part of the Strategic Partner herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Strategic Partner, commencing from the Effective Date, a right of way by way of license to access the Site, as detailed in Schedule B, to undertake the Project and provide the Services together with all singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, for the duration of the Term and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. Provided however that the rights being vested herein does not, and shall not be construed as creating any demise, interest or ownership in the Site, whatsoever in favour of the Strategic Partner or any person claiming under or on its behalf; and is a mere permission to enter the Site and perform the Services envisaged hereunder, subject to and in accordance with terms hereof.

10.1.2 It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the such rights, upon the termination of this Agreement for any reason whatsoever.

### **10.2 Restriction on any other use**

The Strategic Partner shall use the Site only as allotted to it by the Authority and shall not use the allotted Site for any other purpose except to carry out its obligations as per the terms of this Agreement. Further, the Strategic Partner shall not sub-license its rights hereunder or create encumbrances/charge of any nature whatsoever, save and except as may be expressly set forth in this Agreement.

## **ARTICLE 11: OBLIGATIONS OF STRATEGIC PARTNER DURING DESIGN PHASE**

### **11.1 DESIGN PHASE**

11.1.1 During the Design Phase, the Strategic Partner shall complete the design related Services inter alia by way of provision of related inputs /specifications as more particularly detailed in Part A of Schedule A (within the timelines stipulated in Schedule C) in compliance with Good Industry Practice, Applicable Laws and subject to and in accordance with the terms of this Agreement.

11.1.2 The Strategic Partner shall ensure that during the Design Phase, the following Services and related obligations are fulfilled:

- a) The Strategic Partner shall procure and ensure the formulation and submission of the Concept Design, and ensure that such Concept Design mandatorily contain the aspects mentioned in Part A of Schedule A;
- b) The Strategic Partner shall prepare manuals, standard operating procedures (SOP) and protocols on the operational aspects of the Project on the aspects and components specified at SI. No. 2 of Part A of Schedule A. These shall be prepared and submitted in accordance with the timelines specified in Schedule C.
- c) The Strategic Partner shall review the DPR prepared by the Engineering Consultant to ascertain and ensure that such DPR contains all aspects of the Concept Design.

#### **11.1.3 Concept Design**

- a) The Strategic Partner shall prepare the first draft of the Concept Design ("**Concept Design First Draft**") and submit it for review to the Authority within 2 (two) months from the Effective Date.
- b) The Authority, in consultation with the Independent Committee and the Engineering Consultant, shall review the Concept Design First Draft and provide comments and suggestions ,if any, for further amendments to the Concept Design First Draft within 15 (fifteen) days of submission of the Concept Design First Draft.
- c) In case the Authority fails to provide any comments or approve the Concept Design First Draft within the aforesaid fifteen days, for reasons not attributable

to the Strategic Partner, the Concept Design First Draft shall be deemed to be approved for the purpose of this Agreement.

- d) As part of the review and/or approval of the Concept Design First Draft, the Authority shall, as required, make comments and suggest amendments if the Authority is of the opinion that the Concept Design First Draft has significant deviations from the plan, manner and scope of design and specifications which was presented during the Concept Presentation.
- e) Post the receipt of comments and suggestions on the Concept Design First Draft by the Authority, the Strategic Partner shall take into account the comments and suggestions of the Authority and Engineering Consultant and prepare the second draft of the Concept Design (“**Concept Design Final Draft**”) and submit it for review to the Authority within 4 (four) months from the Effective Date.
- f) The Authority, in consultation with the Independent Committee and with inputs from the Engineering Consultant, shall review the Concept Design Final Draft and either approve of the Concept Design Final Draft or provide comments suggesting amendments to the Concept Design Final Draft within 15 (fifteen) days of submission of the Concept Design Final Draft and in turn the Strategic Partner shall, within 15 (fifteen) days of receipt of such comments, submit the amended and revised Concept Design Final Draft.
- g) In case the Authority fails to provide any comments or approve the Concept Design Final Draft within the aforesaid fifteen day period, the Concept Design Final Draft shall be deemed to be approved for the purpose of this Agreement.
- h) As part of the review and/or approval of the Concept Design Final Draft, the Authority shall make comments and suggest amendments if the Authority is of the opinion that the Concept Design Final Draft has significant deviations from the plan, manner and scope of design and specifications which was presented during the Concept Presentation.
- i) Once the Concept Design Final Draft is finalized by the Authority, the same shall be treated as the final Concept Design submitted by the Strategic Partner for the purpose of this Project and for usage by the Engineering Consultant for preparation of the DPR.

#### **11.1.4 Submission of Manuals and SOP**

The Strategic Partner shall be responsible for preparing and submitting the manuals, standard operating procedures and handling and training protocols, specifically mentioned at SI. No. 4 of Part A of Schedule A, within 5 (five) months from the Effective Date. The manuals, protocols, SOPs submitted shall be reviewed by the Authority. The Authority may either accept the manuals, protocols and SOPs or may provide comments suggesting amendments. The Authority shall ensure that the approval or the comments and suggestions for amendments, as the case may be, shall be provided within 30 (thirty) days of submission of the manuals, SOPs and protocols.

Upon the receipt of such comments, the Strategic Partner shall revise the manuals, SOPs and protocols to incorporate the changes suggested by the Authority, within 15 (fifteen) days of receipt of comments from the Authority.

Upon receipt of the revised manuals, SOPs and protocols, the Authority may either approve the revised manuals, SOPs and protocols or may suggest amendments and revisions by way of comments. The Strategic Partner upon receipt of such comments and suggestions, shall make the necessary revisions in the manuals, SOPs and protocols. This process shall continue until the Authority provides its final approval to the manuals, SOPs and protocols.

#### **11.1.5 Review of DPR prepared by Engineering Consultant**

- a) Upon completion of the preparation of the DPR for the NBC by the Engineering Consultant, the Strategic Partner and the Authority shall review the DPR to ensure their compliance with the Concept Design. The Strategic Partner shall ensure that the DPR submitted by Engineering Consultant includes each and every aspect specified in the Concept Design and that the DPR shall only be finalized for the purpose of the Project only upon satisfaction of the Strategic Partner that the DPR wholly complies with the Concept Design.
- b) The Strategic Partner, along with the Authority, shall within 7 (seven) days of receipt of the DPR from the Engineering Consultant either convey acceptance stating that the DPR comply with the Concept Design of the Strategic Partner or suggest amendments to the DPR prepared by the Engineering Consultant so as to ensure compliance with the Concept Design.
- c) If amendments are suggested by the Strategic Partner, then the Authority shall ensure that the Engineering Consultant shall submit revised DPR to the Strategic Partner which shall comply with the Concept Design. This process shall continue until the DPR prepared by the Engineering Consultant are in

conformity with the Concept Design, to the satisfaction of the Strategic Partner.

- d) Provided however, that it shall be ensured that the review and finalization of the DPR shall be completed within 6 (six) months from the Effective Date.

#### 11.1.6 Damages for Delay

- a) The Strategic Partner agrees and undertakes that it shall complete its obligations under each Milestone as contemplated in the Design Phase in accordance and conformity with the Project Completion Schedule set forth in **Part A of Schedule C**, on or before the respective Scheduled Milestone Completion Date. In the event that the Strategic Partner fails to achieve any Milestone by the Scheduled Milestone Completion Date as set forth in Part A of **Schedule C**, as extended in terms hereof, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority amounting to a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such milestone is achieved, subject to a maximum aggregate amount equal to 10% (ten percent) of the Performance Security; provided that if any or all the Scheduled Milestone Completion Dates in the Design Phase are extended in accordance with the provisions of this Agreement, the dates set forth in **Part A of Schedule C** shall be deemed to be modified accordingly and the provisions of this Agreement including this clause shall apply as if **Part A of Schedule C** has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 11.1.6 shall be without prejudice to the rights of the Authority under this Agreement, including the right of termination thereof.
- b) In the event that the Design Phase is not completed within 100 (hundred) days from the Scheduled Design Phase Completion Date, unless the delay is on account of reasons solely attributable to the actions of the Authority, or due to Force Majeure, the same shall be treated as a Strategic Partner Default and the Authority shall be entitled to terminate this Agreement in accordance with Article 25, unless the time is extended by the Authority through written notice.

11.1.7 The Design Phase shall be completed by the Scheduled Design Phase Completion Date. Upon completion of the review and finalization of the DPR as per Clause 11.1.5, the Authority shall issue a certificate of completion of Design Phase (“**Design Phase Completion Certificate**”) and upon issuance of such certificate the Design Phase shall be deemed to have been completed by the Strategic Partner (“**Completion of Design Phase**”). Furthermore, upon

completion of each Milestone as provided in Part A of Schedule C, the Authority shall issue a written certificate (“**Milestone Completion Certificate**”) which shall evidence the completion of that particular Milestone during the Design Phase.

#### 11.1.8 **Extent of Liability of Strategic Partner**

- a) At the time of the finalization of Concept Design, the liability of the Strategic Partner shall be limited solely to the extent of any lack of skill, diligence efficiency, reliability and due care which would reasonably and ordinarily be expected to be used by a skilled and experienced international operator/contractor in formulating the Concept Design and in confirming that the DPR is firmed up taking fully the Concept Design into account. Any risk or liability related to defect or deficiency in DPR arising from reasons not attributable to the Concept Design formulated by Strategic Partner and/or its obligations of ensuring that the DPR is formulated by Engineering Consultant by duly taking the Concept Design into account, shall be borne and addressed by Authority and the Engineering Consultant, which Authority shall ensure and procure through relevant contractual arrangement.
- b) In case any dispute arises between the Authority and the Strategic Partner in connection with and/or arising from and/or in relation to the Concept Design and/or any related inputs or any part thereof and/or the determination of complete accounting/incorporation thereof in the DPR towards finalizing the DPR for the purpose of this Project; such dispute shall be resolved through mediation carried by an independent design expert selected by the Parties in the following manner : out of five (5) reputed experts (individual or firm) suggested and shortlisted by the Authority in its discretion, the Strategic Partner can object to maximum two such experts, and thereafter the Authority shall select one from the remaining experts not objected to as aforesaid, to adjudicate the dispute. The independent expert mentioned hereto shall be appointed at the time, and as required from time to time, when a dispute of the nature specified in this sub-clause b), arises. The cost of appointment of such expert shall be borne equally between the Parties.
- c) At the time of commissioning and handover of NBC in accordance with terms hereof, the liability of the Strategic Partner shall be limited solely to the extent as spelt out in this Clause 11.1.8 (a) above read along with other terms of this Agreement.

- d) In case any dispute arises between the Authority and the Strategic Partner at the time of handover of the as-built NBC as to whether the NBC has been constructed and commissioned by taking into account the Concept Design the mechanism and terms as set out at clause 11.1.8 (b) above, shall be adhered to for resolving the dispute.

#### **11.1.9 Monitoring during construction of NBC**

The Parties hereby agree that during the period of construction of the NBC, the Strategic Partner shall periodically after every six (6) months visit the Site of the NBC to ascertain and verify the progress of construction of the NBC and participate in consultations with the Authority and its related contractors including the Engineering Consultant and the Construction Agency towards ensuring/verifying that the development of NBC conforms to the Concept Design and in turn the approved DPR. Upon such visit, the Strategic Partner may provide to the Authority its observations and comments regarding and red flag and/or point out stress situations that it reasonably identifies as existing or developing and the possible remedial plan/action points. The comments of the Strategic Partner shall be recommendatory in nature and not binding on the Authority and the Authority shall at its sole discretion decide whether to accept such comments and observations. In this regard the Parties also agree that the Strategic Partner shall not bear or be held for any liability in respect of providing such suggestions/observations as envisaged in this Clause 11.1.9.



## **ARTICLE 12: OBLIGATIONS OF THE STRATEGIC PARTNER DURING OPERATIONS PHAS**

12.1 The Strategic Partner shall ensure that the Services mentioned in Part C of Schedule A are provided in accordance with the terms of this Agreement, Applicable Laws, Good Industry Practice and without any Deficiency.

12.2 The Services to be provided during the Operations Phase shall include conducting field trials of the SPF-SPT PL of *L. vannamei* shrimps supplied from the NBC as part of the Evaluation Stream in association and co-ordination with the Authority and using the growout data from such field trial to identify the best performing shrimp families and thereafter conducting selective breeding of the broodstock of the best performing shrimp families at the NBC to derive a new generation of shrimp families which shall be in turn supplied to the BMC as part of the Germplasm Stream. The detailed Scope of Services and obligations to be performed during this Operations Phase has been provided in Part C of Schedule A.

12.3 As part of the Services to be provided during the Operations Phase, the Strategic Partner shall be required to provide training to the personnel of the Authority as well as monitor the operation of the NBC by undertaking periodic visits to the NBC as well as conducting reviews in association with the Authority. The detailed training and monitoring obligations of the Strategic Partner during the Operations Phase have been set out in Article 14 of this Agreement.

12.4 The Strategic Partner shall also be responsible for sharing with the Authority, technical know-how and data, which may include Intellectual Property rights of the Strategic Partner. The Strategic Partner shall provide a non-exclusive, irrevocable, royalty free license to the Authority to use its Intellectual Property for the limited purpose of providing the Services under this Agreement. The manner in which the Intellectual Property and the technical know-how shall be shared and licensed to the Authority has been set out in Article 22 and elsewhere in this Agreement.

### **12.5 Operations Phase Default**

During the Operations Phase, the occurrence of certain defaults by the Strategic Partner and which do not occur due to a Force Majeure Event or due to an Authority Default, shall be deemed to be an operations phase default (“**Operations Phase Default**”). The following events shall be deemed to be such Operations Phase Defaults:

- a) Non-submission of the Training Plan as per the timelines specified in the Agreement;

- b) Non-submission of the Monitoring Plan as per the timelines specified in this Agreement;
- c) Failure to conduct any of the required three training sessions in any year of the Operations Phase with the Authority personnel;
- d) Non-participation in the relevant Half Yearly Meetings in accordance with Clause 14.2 above;
- e) Non-deployment of the required personnel, as per the qualifications set out in Part C of Schedule A or non-deployment of personnel for the time period specified above in Clause 14.3, during Operations Phase I;
- f) Failure to transfer the microsatellite markets for parentage testing in accordance with the timelines set out in Part C of Schedule A;
- g) Failure to transfer the SNP markets to identify QTLs of desirable traits as per the time period specified in Part C of Schedule A; and
- h) Failure to deliver at least thirty (30) distinct least in-breeding families of SPF-SPT *L. vannamei* at least two years prior to the completion of the Term

## 12.6 **Liability for Deficiencies**

Without prejudice to any other provision contained in this Agreement, the following shall govern the occurrence of any Deficiency in Services by the Strategic Partner during the Operations Phase:

- a) In case a Deficiency is observed by the Authority during the provision of Services during the Operations Phase, the Strategic Partner shall be responsible for remedying such Deficiency at its own cost.
- b) In the event the Strategic Partner fails to promptly remedy the Deficiency within 15 days, or such other period as notified in the Authority's sole discretion [which shall supersede 15 days period if notified], from the date of receipt of notice of such Deficiency, issued by the Authority, the Authority shall be entitled to undertake such remedial measures at the risk and cost of the Strategic Partner, and recover the actual cost incurred in remedying the Deficiency from the Strategic Partner. Provided however, the Strategic Partner shall have the right to make a representation to the Authority that remedying such Deficiency may require more than 15 (fifteen) days of Cure Period and upon such representation, the Authority may at its discretion extend the aforementioned Cure Period.
- c) In the event the Strategic Partner fails to remove and remedy the within the Cure Period set out in Clause 12.6 b) above, the Authority shall, without prejudice to its rights under this Agreement including termination thereof, be entitled to recover from the Strategic Partner, Damages for each day of delay at the rate of

0.2% (*zero point two per cent*) of value of the Operations Phase I Performance Guarantee up to a maximum cap of 20% of the value of the Operations Phase I Performance Guarantee. If such maximum cap is reached and the Strategic Partner fails to cure the Deficiency, then the same shall be treated as a Strategic Partner Default and the consequences set forth in Article 25 shall follow.

- d) The Authority shall have the right, and the Strategic Partner hereby expressly grants to the Authority the right to recover the costs and Damages specified in this Clause 12.6 by adjusting with the relevant Fees payable to the Strategic Partner during the Operations Phase and/or by taking recourse to and appropriating the sums from the Performance Guarantee. Upon appropriation of the Performance Guarantee, the same shall be replenished to its full value in accordance with Clause 9.5 or Clause 9.8, as the case may be.
- e) Provided however that in case the Deficiency in Services during the Operations Phase is caused wholly due to a Force Majeure Event or in relation to compliance with a request from the Authority or the directions of any Government Instrumentality, then no Damages specified in sub clause (c) above shall be levied on the Strategic Partner.
- f) For the avoidance of doubt, in case a disagreement or dispute arises between the Parties as to whether there exists a Deficiency in Services during the Operations Phase, the same shall be resolved in accordance with the Dispute Resolution Procedure.

**ARTICLE 13**

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## **ARTICLE 14: TRAINING AND MONITORING OBLIGATIONS**

### **14.1 Monitoring Obligations**

The Strategic Partner shall be obligated to ensure that during Operations Phase I the Services contemplated during this Phase, including but not limited to selective breeding and field trials for growout shall be monitored by personnel deployed by the Strategic Partner at the Site, such that the Services provided are in compliance with the terms of this Agreement including the Scope of Services set forth in Schedule A.

### **14.2 Half Yearly Meeting**

During the Operations Phase, the Strategic Partner and the Authority shall take part in half yearly consultative review meetings, (“**Half Yearly Meeting**”) to discuss, deliberate and highlight issues in relation to whether the Services being provided are adequate and do not suffer from any defect or deficiency. These Half Yearly Meetings shall also include participation by the representatives of the Independent Committee. The Strategic Partner shall send its representatives to India for participation in the Half Yearly Meetings.

At these Half Yearly Meetings, the Authority and the representatives of the Independent Committee may point out shortcomings in the Services or any other major and/or minor issues pertaining to the Services. The Parties along with the representatives of the Independent Committee shall mutually discuss and decide upon the manner in which such Deficiencies and other issues may be remediated/resolved as well as the timelines within which such issues may be resolved.

### **14.3 Periodic Review**

The Parties hereby agree that the Strategic Partner shall undertake a periodic review during the Operations Phase. During Operations Phase I, the Strategic Partner shall mandatorily deploy personnel at the Site for monitoring of the Project and shall endeavour to answer all queries, grievances, comments of the Authority. The Strategic Partner shall be entitled to, during Operations Phase I, deploy the personnel in such a manner that the personnel may be stationed at the Site for a continuous period of 3 (three) weeks, followed by a cooling off period of one week (where the personnel shall not be required to be present at the Site) followed by deployment of the personnel for a three week period again. This procedure of deployment shall take place throughout the Operations Phase I. The qualifications

and experience requirement of the personnel has been specified in Part C of Schedule A.

From the Operations Phase II to the completion of the Term, the qualified personnel of the Strategic Partner shall not be required to be deployed at the Site. Provided however that this shall not derogate from the Strategic Partner's obligation to participate in the Half Yearly Meetings during this Operations Phase II.

Furthermore, the Strategic Partner shall ensure that, during the entirety of the Operations Phase, the Strategic Partner shall ensure availability of its personnel for answering the queries, grievances, comments and providing clarifications to the Authority, whether orally or in writing, as the Authority may deem necessary.

#### 14.4 **Monitoring Plan**

- a) The Strategic Partner shall during the Operations Phase, on an annual basis, submit to the Authority a monitoring plan ("**Monitoring Plan**") laying down the schedule for the Quarterly Reviews for that year. The Monitoring Plan shall include the schedule and the discussion points contemplated by the Strategic Partner in each Quarterly Review. The Strategic Partner shall submit the Monitoring Plan for that year 30 (thirty) days prior to the beginning of that particular year of the Operations Phase.
- b) Upon submission of the Monitoring Plan, the Authority may suggest certain amendments to the Monitoring Plan and the Strategic Partner shall upon receiving such suggestion, mutually discuss with the Authority and revise the Monitoring Plan accordingly.

#### 14.5 **Training Obligations**

The Strategic Partner shall be obligated to provide regular and periodic training to the personnel of the Authority on the topics and aspects mentioned in Part C of Schedule A. For this purpose, the Strategic Partner shall ensure that during every year of the Operations Phase I, it provides at least 3 (three) training sessions, annually, to the Authority personnel.

#### 14.6 **Training Plan**

As part of its obligations, the Strategic Partner shall submit every year, beginning with the first year of the Operations Phase I, a training plan ("**Training Plan**") which shall lay down the schedule and the types of training and the topics on which it intends to provide training to the staff and personnel of the Authority. The

Training Plan for every year shall be submitted 30 (thirty) days prior to the beginning of that particular year of the Operations Phase I to the Authority for its review. For the purpose of submission of the Training Plan for the first year of the Operations Phase I, the Strategic Partner shall submit the Training Plan for that year 30 (thirty) days prior to the date of Commissioning of the NBC.

The Authority may provide certain suggestions, comments or amendments to the Training Plan including but not limited to suggestions for inclusion of additional topics for training which the Authority deems necessary. The Strategic Partner shall use its best efforts and endeavours and include the changes and additions suggested by the Authority to the revised Training Plan and submit the same to the Authority.

For the avoidance of doubt, the Authority and the Strategic Partner may mutually decide upon the Strategic Partner providing training to the personnel of the Authority during Operations Phase II as well.

## **ARTICLE 15: SUPPLY OBLIGATIONS**

### **15.1 Supply of Shrimps**

15.1.1 During the Supply Phase, the Strategic Partner shall be responsible for supplying and importing the SPF-SPT PL of *L. vannamei* shrimps to the NBC and the BMC operated by the Authority, in accordance with and as stipulated by the provisions of Clause 15.2, below.

15.1.2 The Strategic Partner shall be solely responsible for supplying and importing the SPF-SPT PL of *L. vannamei* shrimps during the Supply Phase in the quantity and frequency as stipulated and mandated under the terms of this Agreement, specifically this Article 15 and Schedule A. The Strategic Partner shall ensure that the supply of such shrimps shall be in accordance with Applicable Laws, Applicable Permits and Good Industry Practice.

15.1.3 The Strategic Partner shall be responsible for procuring and maintaining during the Term of this Agreement, all necessary Applicable Permits and regulatory approvals as are necessary for supplying and importing the SPF-SPT PL of *L. vannamei* shrimps, as mandated by the Government of India, from time to time, including but not limited to any applicable sanitary, phytosanitary and quarantine permits and licenses.

15.1.4 The Strategic Partner shall ensure that for the purpose of this Project, the supply of PL of *L. vannamei* as part of the Evaluation Stream shall not be from countries:

- a) Which have been banned by the Government of India due to shrimps from such countries being affected by the Acute Hepatopancreatic Necrosis Syndrome (AHPNS) or commonly known as the Early Mortality Syndrome;
- b) Which are engaged in commercial production of shrimps i.e. countries which are producing 50,000 tonnes of *L. vannamei* shrimps per annum, in the year prior to the Bid Due Date, as mentioned in the RFP.

### **15.2 Specific Supply Obligations**

#### **a) During the Supply Phase**

The Strategic Partner shall ensure import and supply of Designated Number of Families of Specific Pathogen Free (SPF) along with one or more Specific Pathogen Tolerant (SPT) PL of *L. vannamei* shrimps annually, divided into 2 (two) equally sized Evaluation Stream Cohorts, for field trial in India, as part of the Evaluation Stream (ES). Upon completion of the field trial conducted by the Strategic Partner and the Authority in India, the growout data shall be utilized and analysed by the Strategic Partner and the best performing



families shall be identified on the basis of parameters such as growth, reproduction strength and disease tolerance. The shrimps from the best performing families shall be grown to broodstock size at the Nucleus Breeding Centre being operated by the Strategic Partner (“SP-NBC”) and the said broodstock shall be selectively bred by the Strategic Partner in the SP-NBC and as a result of this selective breeding new generation of family/families shall be derived. The SPF-SPT PL of *L. vannamei* shrimps of such new family/families shall be supplied to the BMC as part of the Germplasm Stream (GS). The Germplasm Stream for a year (consisting of 2 (two) Germplasm Stream Cohorts) shall contain at least 120,000 (one hundred and twenty thousand) SPF-SPT PL of *L. vannamei* shrimps such that a minimum of 60,000 (sixty thousand) broodstock may be produced by the BMC, annually.

For the avoidance of doubt and for the purpose of clarity and explanation, in every year during the Supply Phase, as part of the Evaluation Stream, there shall be 2 (two) cohorts of SPF-SPT PL of *L. vannamei* shrimps with each cohort consisting half the number of Designated Number of Families. Each cohort shall be known as an Evaluation Stream Cohort. Post evaluation of the shrimps in each such Evaluation Stream Cohort, through field trial, there shall be subsequent selective breeding at the SP-NBC which shall lead to the production of new families of SPF-SPT PL of *L. vannamei* shrimps which shall be in turn supplied to the BMC i.e. the Germplasm Stream Cohort. For the avoidance of doubt, there shall be 2 (two) Germplasm Stream Cohorts in a year. Each Germplasm Stream Cohort shall consist of a minimum of 60,000 (sixty thousand) SPF-SPT PL of *L. vannamei* shrimps which shall be necessary for the production of at least 30,000 (thirty thousand) broodstock by the BMC from that Germplasm Stream Cohort and since there shall be 2 (two) Germplasm Stream Cohorts in a year (consisting of a minimum of 120,000 (one hundred and twenty thousand) SPF-SPT PL of *L. vannamei* shrimps), **the BMC shall thereby be capable of producing at least 60,000 (sixty thousand) broodstock annually.**

**b) During the Operations Phase**

Commencing from the Operations Phase, there shall be no import of SPF-SPT PL of *L. vannamei*. The NBC itself shall supply the Designated Number of Families of SPF-SPT PL of *L. vannamei* shrimps for field trial in India, as part of the Evaluation Stream. Upon completion of the field trial and analysis of the growout data, the best performing families of shrimp are to be identified on the basis of parameters such as growth, reproduction strength and disease tolerance. The shrimps of the best performing families are to be grown to broodstock size at the NBC and the said broodstock shall be selectively bred under the supervision of the Strategic Partner and the Authority at the NBC and new generations of shrimp families shall be derived and developed. The SPF-SPT PL of *L. vannamei* of the new families derived from selective breeding at the NBC shall be supplied to the BMC and the other Broodstock Multiplication Centres operational in India

as part of the Germplasm Stream (GS). The Germplasm Stream for a year, supplied by the NBC, shall consist of at least 120,000 (one hundred twenty thousand) SPF-SPT PL of *L. vannamei* shrimps such that a minimum of 60,000 (sixty thousand) broodstock may be produced by the BMC and the other Broodstock Multiplication Centres operational in India.

For the avoidance of doubt and for the purpose of explanation, commencing from the Operations Phase, during each year of the Operations Phase it shall be the NBC which shall supply the Designated Number of Families as part of the Evaluation Stream. Post evaluation of the shrimps in the Evaluation Stream Cohort, through field trial, there shall be subsequent selective breeding at the NBC itself which shall lead to the production of new families of SPF-SPT PL of *L. vannamei* shrimps which shall be in turn supplied to the BMC and other Broodstock Multiplication Centres operational in India i.e. the Germplasm Stream Cohort. Each Germplasm Stream Cohort shall consist a minimum of 60,000 (sixty thousand) SPF-SPT PL of *L. vannamei* shrimps which shall be necessary for the production of a minimum 30,000 (thirty thousand) broodstock by the BMC and the other Broodstock Multiplication Centres operational in India and since there shall be 2 (two) Germplasm Stream Cohorts supplied in a year (consisting of a total of a minimum 120,000 (one hundred twenty thousand) SPF-SPT PL of *L. vannamei* shrimps which shall be supplied in a year) from the NBC, the BMC and the other Broodstock Multiplication Centres operational in India shall therefore be capable of producing at least 60,000 (sixty thousand) broodstock annually.

Provided however, for the purpose of this Clause 15.2 (b), if at least 60,000 (sixty thousand) SPF-SPT PL of *L. vannamei* to be supplied as part of each Germplasm Stream Cohort in the year cannot be supplied by the NBC to the BMC, the Strategic Partner shall ensure that the shortfall amount shall be supplied by the SP-NBC. For the purpose of illustration, if, as part of one Germplasm Stream Cohort, the NBC is able to supply only 50,000 (fifty thousand) SPF-SPT PL of *L. vannamei* to the BMC, then the SP-NBC shall step in and supply the shortfall 10,000 SPF-SPT PL of *L. vannamei* such that the BMC is capable of producing at least 30,000 (thirty thousand) broodstock from that Germplasm Stream Cohort. For the avoidance of doubt, during the Operations Phase, the process stipulated herein shall be adhered to with respect to each Germplasm Stream Cohort, thereby facilitating and enabling the BMC to produce a minimum of 60,000 (sixty thousand) broodstock annually. It is hereby clarified for the fulfilment of the obligation mentioned in this proviso, the Strategic Partner shall not receive any extra payment in addition to the Supply Fee and the cost and expenses shall be borne solely by the Strategic Partner.

- 15.3 The Parties further hereby agree that at least 2 (two) years prior to the expiry of the Term, the Strategic Partner shall supply, at least 30 (thirty) distinct least inbreeding

families of *L. vannamei* shrimp. The Strategic Partner shall ensure that the origin of abovementioned 30 (thirty) families shall be preferably from diverse geographical areas such that maximum genetic variation may be exploited for the purpose of this Project.

#### **15.4 Damages for non-performance during Supply Phase**

- a) The families of SPF-SPT PL of *L. vannamei* shrimps supplied and imported as part of each Evaluation Stream Cohort during the Supply Phase shall adhere to the Performance Parameters set out in Schedule H of this Agreement.
- b) In case the Designated Number of Families supplied as part of the Evaluation Stream Cohort during the Supply Phase fail to adhere to and perform in accordance with one or more of the Performance Parameters during a laboratory test conducted by the Authority, then the same shall be treated as non-performance or non-observance of the obligations by the Strategic Partner for which it shall be liable to pay damages in accordance with terms hereunder .
- c) In case of such event of default, the Authority shall levy and Strategic Partner shall pay Damages at the rate of 0.5% (zero point five percent) of the value of the Supply Fee Performance Security, for each instance (each non-compliance with single parameter to be treated as one such instance triggering damages) of event of default and the same shall be deducted and recovered from the relevant monthly fee payable during the Operations Phase, hereunder, and/or by encashment of the Supply Phase Performance Security if required to meet the shortfall.
- d) Provided however, that if the Independent Committee determines and recommends that the non-conformance with the Performance Parameters by the Designated Number of Families has taken place due to the occurrence of a Force Majeure Event or due to reasons which cannot be attributed to any lapse or default committed by the Strategic Partner, then upon the recommendation of the Independent Committee, the Authority shall waive the levy of Damages on the Strategic Partner, for such non-performance default.

#### **15.5 Improvement in Technology**

During the Term of this Agreement, if the Authority, in consultation with MPEDA and the Independent Committee, are of the considered opinion that there have been improvements to the technology or any kind of technological advancement and upgradation at the BMC or any of the Broodstock Multiplication Centres operational in India, then the Authority shall in mutual consultation and discussion with the Strategic Partner decide upon reducing the quantum of Designated Number of Families, to be supplied as part of the Evaluation Stream, as specified herein above in

this Article 15 and the same shall be conveyed to the Strategic Partner. However, for the avoidance of doubt, the Damages levied for the non-performance default, as specified in Clause 15.4, above, shall continue to be applicable.

#### 15.6 **Supply Phase Performance Security**

The Strategic Partner shall towards securing the performance of its obligations during the Supply Phase, furnish to the Authority no later than 15 (fifteen) days prior to the import of each Evaluation Stream Cohort an irrevocable and unconditional guarantee from a Bank for a sum equivalent to USD/INR [\*\*\*] (United States Dollars/ Indian Rupees \*\*\* only) (equivalent to value of 2% of the fees payable for each Evaluation Stream Cohort, as quoted in the Financial Bid) in the form set forth in Part D of Schedule E (each bank guarantee being named as the “**Supply Phase Performance Security**”). For the avoidance of doubt, the Strategic Partner shall furnish a Supply Phase Performance Security against the due performance of each Evaluation Stream Cohort supplied. Each such Supply Phase Performance Security shall be released within six months of issuance of the relevant Supply Phase Performance Security, provided however, in case of reasonable satisfaction of the Authority with regard to the due adherence of the supplied cohort with committed parameters, the Authority may decide to release the same earlier.

## **ARTICLE 16: CHANGE OF SCOPE**

### **16.1 Change of Scope**

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional services which are not included in the Scope of Services as contemplated by this Agreement (“**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Strategic Partner and reimbursed to it by the Authority in accordance with Clause 16.2.4.

16.1.2 Any services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such services.

### **16.2 Procedure for Change of Scope**

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Strategic Partner a notice specifying in reasonable detail the services contemplated thereunder (the “**Change of Scope Notice**”) and the resultant impact (increase or decrease) on the Fee payable to the Strategic Partner under this Agreement.

16.2.2 Upon receipt of a Change of Scope Notice, the Strategic Partner shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any.

16.2.3 Upon receipt of information set forth in Clause 16.2.2 above, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Strategic Partner, and the Parties shall, with assistance, thereupon of the Authority, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Strategic Partner to proceed with the performance thereof.

16.2.4 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Strategic Partner of a sum equal to 20% (twenty per cent) of the cost of implementing Change of Scope Order. The Strategic Partner shall, after

commencement of the activities, present to the Authority bills for payment in respect of the work in progress supported by such documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Strategic Partner such amounts after making a proportionate deduction for the advance payment made hereunder, and in the event of any dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.2.5 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Strategic Partner to undertake any services if such services are likely to obstruct or impair the continuous operation of the Project.

16.2.6 Furthermore, notwithstanding anything to the contrary contained in this Article 16, all aggregate costs arising out of all Change of Scope Orders issued during the Term, shall not exceed 10% (ten percent) of the total Fee being paid under this Agreement for the entire Term

## **ARTICLE 17: CHANGE IN LAW**

### **17.1 Increase in costs**

If as a result of Change in Law (confined to Applicable Law), the Strategic Partner suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the amount equivalent to 10% (ten percent) of the Fee payable under this Agreement i.e. the value of this Agreement, the Strategic Partner may so notify the Authority and propose amendments to this Agreement so as to place the Strategic Partner in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Strategic Partner, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement including, inter alia, making good the financial loss by consulting an independent expert as mutually appointed by the Parties.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 17.1 shall be restricted to changes in law directly affecting the Strategic Partner's costs of performing its obligations under this Agreement.

### **17.2 Reduction in costs**

If as a result of Change in Law, the Strategic Partner benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the amount equivalent to 10% (ten percent) of the Fee i.e. the value of this Agreement, the Authority may so notify the Strategic Partner and propose amendments to this Agreement so as to place the Strategic Partner in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 17.2 shall be restricted to changes in law directly affecting the Strategic Partner's costs of performing its obligations under this Agreement.

## **ARTICLE 18: INDEPENDENT COMMITTEE**

### **18.1 Appointment of Independent Committee**

The Parties hereby agree that the Technical Committee constituted by the Authority along with the Government of India and which was involved in the process of verification of technical credentials of the Strategic Partner during the time of submission of the Strategic Partner's Bid and the Concept Presentation, shall act as the independent committee for the purpose of this Agreement ("**Independent Committee**").

### **18.2 Duties and Functions**

The Independent Committee shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule G.

### **18.3 Remuneration**

If there arises any costs and expenses associated with the Independent Committee, the same shall be borne by the Authority.

### **18.4 Termination of appointment**

**18.4.1** The Authority may, in its discretion, terminate the appointment of any member of the Independent Committee at any time, but only after appointment of another alternate member in the Independent Committee in accordance with Clause 18.1.

**18.4.2** If the Strategic Partner has reason to believe that the Independent Committee or any member(s) of the Independent Committee is not discharging the duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Committee or of any member(s) of the Independent Committee. Upon receipt of such representation, the Authority may at its discretion hold a meeting with the Strategic Partner and the Independent Committee, for an amicable resolution of the dispute, and if any difference or disagreement remains unresolved, the dispute shall be settled in accordance with the Dispute Resolution Procedure.

### **18.5 Authorised Signatories**

The Authority shall require the Independent Committee to designate and notify to the Authority and the Strategic Partner 2 (two) persons to sign for and on behalf of the Independent Committee; provided that the Independent Committee may, by notice,



substitute the designated person(s) with another person(s) from the Independent Committee

## **18.6 Dispute resolution**

If the Authority and the Strategic Partner disputes any advice, instruction, decision, direction or award of the Independent Committee, or the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## ARTICLE 19: PAYMENT TERMS

### 19.1 Payment of Fee

For the purpose of this Agreement, the Authority shall pay all fees due and payable under this Agreement (“Fees”) to the Strategic Partner in the following manner:

#### c. Design Phase

- a) The Authority shall pay the lump sum fee of US\$/INR [\*\*]<sup>3</sup> to the Strategic Partner, in lieu of the Services provided during the Design Phase (as specified in Part A of Schedule A) in instalments as per the Payment Milestones set forth in Part A of Schedule D of this Agreement. Upon the completion of the activities contemplated against each Payment Milestone of the Design Phase and issuance of the Milestone Completion Certificate by the Authority, the Strategic Partner shall notify the Authority and the Authority shall in turn notify and certify, through a written notice, (“**Completion Notice**”) that the activities against such Payment Milestone have been duly completed to the satisfaction of the Authority.
- b) The Strategic Partner shall raise an invoice for the payment of the relevant instalment of the Lump Sum Fee within 5 (five) days of receipt of the Completion Notice against each relevant Payment Milestone and submit the said invoice to the Authority.
- c) The Authority shall release the payment to the Strategic Partner no later than 30 (thirty) days from receipt of an invoice from the Strategic Partner along with necessary particulars.
- d) The Authority shall, after due verification, pay the amounts mentioned in the invoice to the Strategic Partner. It is hereby clarified and the Strategic Partner understands and agrees that the instalment of the Lump Sum Fee shall be subject to deductions on account of Damages levied in terms hereunder for any reason specified in this Agreement.
- e) For any reason, other than those attributable to the Strategic Partner, if the Authority fails to pay the invoices within the stipulated payment period mentioned above, without assigning any reason or giving advance communication of delay in payment, then in that case the Authority shall be liable to pay interest @ Bank Rate per annum for the period of delay for such

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<sup>3</sup> This shall be equivalent to the amount quoted in component ‘A’ of the Financial Bid. During the Term, this amount shall be payable to the Strategic Partner in the currency in which the Bid was submitted.

amount. For the purpose of this agreement “**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.

- f) For the purpose of payment of the Lump Sum Fee, the Strategic Partner shall intimate the Authority of its designated bank account where the payment against each Payment Milestone shall be made by the Authority.

**d. Supply Phase**

- a) During the Supply Phase, the Authority shall issue an irrevocable letter of credit (“**Letter of Credit**”) from a scheduled commercial bank (“**Issuing Bank**”) in favour of the Strategic Partner at the beginning of each year for a period of 12 (twelve) months, within 7 (seven) days from the beginning of such year. For each year, the value of the Letter of Credit shall be equivalent to US\$/INR [\*\*]<sup>4</sup>. All charges within India for establishing such Letter of Credit shall be borne by the Authority and all charges outside India including the appointment of the nominated bank in the country of the Strategic Partner (“**Nominated Bank**”) shall be borne by the Strategic Partner.
- b) Upon the arrival and thereafter acceptance, including but not limited to completion of all quarantine procedures at the AQF under Applicable Law, of the PL of *L. vannamei* for the Evaluation Stream and/or Germplasm Stream, as the case may be, the relevant amount for each cohort of Evaluation Stream<sup>5</sup> (as specified in Schedule D of this Agreement) and/or Germplasm Stream (as specified in Schedule D of this Agreement)<sup>6</sup>, as the case may be, shall be paid to the Strategic Partner from the Letter of Credit, subject to the submission of the following documents to the Issuing Bank by the Strategic Partner:
  - i) Strategic Partner’s signed commercial invoice submitted in duplicate showing Agreement details, description of the supplied PL. *L. vannamei*, corresponding quantity, the total value of the invoice and name of the Authority;

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<sup>4</sup> This shall be equivalent to the value of two cohorts of Evaluation Stream and two cohorts of the Germplasm Stream required for that year of the Supply Phase. The value of each cohort shall be as per the rate quoted in the Financial Bid. During the Term, this amount shall be payable to the Strategic Partner in the currency in which the Bid was submitted.

<sup>5</sup> This shall be in accordance with the Financial Bid of the Strategic Partner

<sup>6</sup> This shall be in accordance with the Financial Bid of the Strategic Partner

- ii) Packing list, identifying contents of each package if the PL. *L. vannamei* is being supplied in several packages.
  - iii) Certificate of origin issued by the government of the country of the Strategic Partner;
  - iv) Health certificate issued by the competent authority in the Strategic Partner's country indicating SPF-SPT status of the PL. of *L.vannamei* as well as a certificate indicating that the PL of *L. vannamei* is free of the 6 (six) OIE listed pathogens.
  - v) Quarantine Clearance Certificate issued by the AQF in accordance with Applicable Laws (as amended from time to time).
  - vi) Any other document or certification which may be required by the Issuing Bank and/or the Nominated Bank under the Letter of Credit terms and conditions as well as under Applicable Laws and the laws of the country of origin of the Strategic Partner.
- c) For the avoidance of doubt, the total fee payable for the supply of Evaluation Stream and Germplasm Stream during the Supply Phase shall be referred to in the context of this Agreement as the “**Supply Fee**”.

**e. Operations Phase I**

- a) During the Operations Phase I, the Strategic Partner shall be paid a monthly fee of INR/USD [\*\*\*]<sup>7</sup> (United States Dollars \*\*\*/Indian Rupees \*\*\*) (“**Monthly Fee for Operations Phase I**”) for the provision of the Services specified in Part C of Schedule A.
- b) The Strategic Partner shall raise an invoice for the payment of the relevant instalment of the Monthly Fee for Operations Phase I within 5 (five) days of the completion of each month during Operations Phase I.
- c) The Authority shall release the payment to the Strategic Partner no later than 30 (thirty) days from receipt of an invoice from the Strategic Partner along with necessary particulars. The particulars shall include a certification from the Strategic Partner that its personnel has been deployed at the Site of the NBC during the relevant month at least for a period of three months in accordance with Article 14.
- d) The Authority shall, after due verification, pay the amounts mentioned in the invoice to the Strategic Partner. It is hereby clarified and the Strategic Partner

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<sup>7</sup> As per the Financial Bid quoted for this component by the Strategic Partner. During the Term, this amount shall be payable to the Strategic Partner in the currency in which the Bid was submitted.

understands and agrees that the instalment of the Monthly Fee for Operations Phase I shall be subject to deductions on account of Damages levied in terms hereunder for any reason specified in this Agreement.

- e) For any reason, other than those attributable to the Strategic Partner, if the Authority fails to pay the invoices within the stipulated payment period mentioned above, without assigning any reason or giving advance communication of delay in payment, then in that case the Authority shall be liable to pay interest @ Bank Rate per annum for the period of delay for such amount.
- f) For the purpose of payment of the Monthly Fee for Operations Phase I, the Strategic Partner shall intimate the Authority of its designated bank account where the payment shall be made by the Authority.

**f. Operations Phase II**

- a) During Operations Phase II, the Strategic Partner shall be paid a monthly fee of INR/USD [\*\*\*]<sup>8</sup> (Indian Rupees \*\*\*/ United States Dollars \*\*\*) (“**Monthly Fee for Operations Phase II**”) for the provision of the Services specified in Part C of Schedule A.
- b) The Strategic Partner shall raise an invoice for the payment of the relevant instalment of the Monthly Fee for Operations Phase II within 5 (five) days of the completion of each month during Operations Phase II.
- c) The Authority shall release the payment to the Strategic Partner no later than 30 (thirty) days from receipt of an invoice from the Strategic Partner along with necessary particulars.
- d) The Authority shall, after due verification, pay the amounts mentioned in the invoice to the Strategic Partner. It is hereby clarified and the Strategic Partner understands and agrees that the instalment of the Monthly Fee for Operations Phase II shall be subject to deductions on account of Damages levied in terms hereunder for any reason specified in this Agreement.
- e) For any reason, other than those attributable to the Strategic Partner, if the Authority fails to pay the invoices within the stipulated payment period mentioned above, without assigning any reason or giving advance

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<sup>8</sup> As per the Financial Bid quoted for this component by the Strategic Partner. During the Term, this amount shall be payable to the Strategic Partner in the currency in which the Bid was submitted.

communication of delay in payment, then in that case the Authority shall be liable to pay interest @ Bank Rate per annum for the period of delay for such amount..

- f) For the purpose of payment of the Monthly Fee for Operations Phase II, the Strategic Partner shall intimate the Authority of its designated bank account where the payment shall be made by the Authority.
- g) For the purposes of this Agreement, the Monthly Fee for Operations Phase I and the Monthly Fee for Operations Phase II shall be collectively referred to as “**O&M Fee**”.

**g. Payment for handover of Pedigree Data**

- a) Upon the completion the 5<sup>th</sup> (fifth) year of the Operations Phase, the Strategic Partner shall supply and develop at least 30 (thirty) distinct least inbreeding *L. vannamei* shrimp families and also transfer and deliver forthwith the Pedigree Data. The details of submission of such Pedigree Data has been set forth in Clause 26.2.1.
- b) Upon the completion of the submission of at least 30 (thirty) distinct least inbreeding *L. vannamei* shrimp families and the Pedigree Data, the same shall be reviewed and analysed by the Authority and the Independent Committee.
- c) Upon satisfaction of the Authority and the Independent Committee, the Strategic Partner shall raise an invoice with the necessary particulars and submit the same to the Authority and the Authority shall in turn pay a sum equivalent to USD/INR [\*\*]<sup>9</sup> (United States Dollars/Indian Rupees \*\*\*) (“**Fee for Pedigree Data**”) to the Strategic Partner within 30 (thirty) days from the receipt of the invoice.
- d) The consequences of non-supply and submission of the thirty distinct lease inbreeding *L. vannamei* families by the Strategic Partner has been set forth in Clause 26.2.1 of this Agreement.

**19.2. Currency of Payment**

For the purpose of payment for the Services provided under this Agreement, the Strategic Partner shall be entitled to receive payment from the Authority in the currency in which the Strategic Partner quoted its Financial Bid. For the avoidance of doubt, under no circumstance shall the Strategic Partner receive different parts of the Fee in different currencies.

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<sup>9</sup> As per the amount quoted in the Financial Bid of the Strategic Partner. During the Term, this amount shall be payable to the Strategic Partner in the currency in which the Bid was submitted.

### **19.3. Taxes**

For the purpose of payment of all Fees under this Agreement, the Parties hereby agree that the payment of all applicable Taxes shall be in accordance and compliance with Applicable Laws including the relevant Double Taxation Avoidance Agreement between India and the country of origin of the Strategic Partner.

## **ARTICLE 20: SAFETY AND SECURITY REQUIREMENTS**

### **20.1. Security Requirements**

The Strategic Partner shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for maintaining the security at the Site. In particular, the Parties shall develop, implement and administer a surveillance and security programme for maintenance of the Site and the NBC in particular, and shall comply with the security requirements (“**Security Requirements**”).

### **20.2 Safety Requirements**

The Strategic Partner shall in performing its obligations under this Agreement comply with and procure that its personnel and Subcontractors comply with all Applicable Laws, Applicable Permits, requirements of the Authority relating to occupational health, safety and the environment.

The Strategic Partner shall adhere to standard safety procedures and standard emergency operating procedures to be adhered to as Good Industry Practice while performing the Services.



## **ARTICLE 21: INSURANCE**

21.1 The Strategic Partner shall take out and maintain at its cost, and shall cause any Subcontractors to take out and maintain, at their cost, as the case may be including but not limited to all insurance premium payments, but on terms and conditions approved by the Authority, such insurances as Strategic Partner may reasonably consider necessary or prudent in accordance with Good Industry Practice (“**Insurance Cover**”). The insurance policies so procured shall mention the Authority as co-insured against the risks, and for the coverage of the insurance policies, to the extent permissible under Applicable Laws.

21.2 All insurances obtained by the Strategic Partner in accordance with this Article 21 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 7 (seven) days of obtaining any insurance, the Strategic Partner shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 30 (thirty) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Strategic Partner to the Authority.

21.3 If the Strategic Partner fails to effect and keep in force the Insurance Cover for which it is responsible pursuant hereto, the Authority shall have the right to keep in force any such insurances itself and pay such premium and recover the costs thereof from the Strategic Partner.

### **21.4 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Strategic Partner, pursuant to this Article 21, shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## **ARTICLE 22: INTELLECTUAL PROPERTY RIGHTS**

**22.1** The Strategic Partner represents and warrants that:

- a) the Strategic Partner either owns or has current rights to use or license all Intellectual Property rights embodied in the Services or any documentation provided by the Strategic Partner to the Authority under or in connection with this Agreement and that such rights to use or license does not as on date of this Agreement, to the best of its knowledge and bona fide belief, violate or infringe any third party intellectual property right. The Strategic Partner further represents and warrants that there are no actual or to the best of its knowledge, threatened proceedings against the Strategic Partner alleging infringement of any third party intellectual property right, in respect of the Services such as would restrict or prohibit the use of the Intellectual Property right by the Strategic Partner for the Services to the Authority and performance of the Strategic Partner's obligations under this Agreement; and
- b) it has all rights necessary to grant the Authority a license to use the Intellectual Property in the Services as may be necessary for the purpose of this Agreement without any additional payment of any fees, cost or expenses for using the same.

**22.2** The Authority acknowledges that the Services to be provided under this Agreement applies, features or otherwise makes use of one or more Intellectual Property of which the Strategic Partner is the exclusive proprietor or is otherwise lawfully entitled to so apply, feature or make use of in the Services and that the Authority shall have no rights in or to such Intellectual Property or any incremental rights thereto other than as expressly set out in this Agreement.

**22.3** The Strategic Partner grants to the Authority, in terms of this Agreement, a non-exclusive, irrevocable and royalty-free license to use the Intellectual Property rights of the Strategic Partner in the Services and any documentation and other materials provided by the Strategic Partner to the Authority under or in connection with this Agreement, to the extent necessary for the purpose of this Agreement. It is clarified for the avoidance of doubt that the license does not amount to a transfer of the Strategic Partner's Intellectual Property from the Strategic Partner to the Authority.

**22.4 Limitations in use of The Intellectual Property Right:**

The Authority shall refrain from using the Intellectual Property right herein granted for any purpose other than for the Scope of Services set out under this Agreement. The Authority shall not modify, decompile, disassemble, decompile, extract, or otherwise reverse engineer any element of the Services or any technology forming part thereof.

The Authority shall not copy, publish, lease, lend, distribute, make available or otherwise encumber any Intellectual Property herein granted, except as otherwise expressly provided herein.

## **22.5 Intellectual Property Indemnification**

In performing the Scope of Services, the Strategic Partner shall not incorporate into the Scope of Services, or use in connection with the provision of the Scope of Services, any materials, components, design, methods, processes or systems that involve the use of any Confidential Information or Intellectual Property rights that the Strategic Partner does not have the right to use or incorporate or which may result in claims or suits against the Authority, the Strategic Partner or any Subcontractor, arising out of claims of infringement of any third party, domestic or foreign patent rights, copyrights, other proprietary rights, or Intellectual Property rights, licenses or agreements, or applications thereof, or rights of use of confidential information.

The Strategic Partner shall fully indemnify, hold harmless and defend the Authority from and against any and all damages, claims and losses that the Authority may suffer, incur or pay by reason of any claims or suits arising out of claims of infringement of any Intellectual Property or any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to equipment, designs, techniques, processes and information designed or used by the Strategic Partner or any Subcontractor in performance of the Scope of Services hereunder or under the Subcontracts in any way incorporated in or related to the Project.

If, in any suit or claim relating to the foregoing, a temporary restraining order or preliminary injunction is granted, the Strategic Partner shall make every effort to secure the suspension of the injunction or restraining order. If, in any such suit or claim, any part, combination or process of the Scope of Services, is finally held to constitute an infringement and its use is permanently enjoined, the Strategic Partner shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the Services. If the Strategic Partner is unable to secure such license within a reasonable time, it shall, at its own expense and without impairing performance requirements, either replace the affected Scope of Services, or part, combination or process thereof with non-infringing components, parts or modify the same so that they become non-infringing.

## **ARTICLE 23: FORCE MAJEURE**

### **23.1 Force Majeure**

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 23.2, 23.3 and 23.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome the same by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### **23.2 Non-Political Event**

A Non-Political Event shall include one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion;
- (b) strikes or boycotts or arson or theft (other than those involving the Strategic Partner, Subcontractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting the Services to be provided with respect to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 23.3 below;
- (c) any failure or delay of a Subcontractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Strategic Partner by or on behalf of such Subcontractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Strategic Partner in any proceedings for reasons other than (i) failure of the Strategic Partner to comply with any Applicable Laws or Applicable Permits, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or

- (e) any event or circumstances of a nature analogous to any of the foregoing.

### 23.3 **Indirect Political Event**

An Indirect Political Event shall include one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Strategic Partner by or on behalf of such Contractor;
- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

### 23.4 **Political Event**

A Political Event shall include one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) compulsory acquisition in national interest or expropriation of rights of the Strategic Partner;
- (b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Strategic Partner to perform its obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Strategic Partner's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (c) any failure or delay of a Subcontractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Strategic Partner by or on behalf of such Contractor; or
- (d) any event or circumstance of a nature analogous to any of the foregoing.

### **23.5 Duty to report Force Majeure Event**

23.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 23 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

23.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and giving particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

23.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 23.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### **23.6 Effect of Force Majeure Event on the Agreement**

23.6.1 Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Conditions Precedent period as set forth in Article 4 shall be extended by a period equal in length to the duration of the Force Majeure Event.

23.6.2 At any time after the commencement of the Term, if any Force Majeure Event occurs whereupon the Strategic Partner is unable to provide the Services during the period for which Force Majeure exists, no Fee under this Agreement shall be paid by the Authority to the Strategic Partner and appropriate deductions shall be made by the Authority at the time of settling the amounts towards payment of any Fee. However, the Strategic Partner shall not be liable to pay any Damages to the Authority in case it is unable to provide the Services on account of any Force Majeure Event.

### **23.7 Allocation of costs arising out of Force Majeure**

23.7.1 Upon occurrence of any Non-Political Event during the Term, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

23.7.2 Upon occurrence of any Indirect Political Event, the Authority shall bear 50% (fifty percent) of the costs associated with such Force Majeure Event over and above the payment received from the Insurance Cover.

23.7.3 Upon occurrence of any Political Event, the Authority shall bear all the costs associated with such Force Majeure Event, over and above the payments received from the Insurance Cover taken by the Strategic Partner.

23.7.4 Save and except as expressly provided in this Article 23, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

### **23.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for more than a continuous period of 90 (ninety) days or for a total/cumulative time period of more than 360 (three hundred and sixty) days during the Term, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 23, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a

representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

### **23.9 Termination Payment for Force Majeure Event**

23.9.1 If Termination is on account of Non-Political Force Majeure Events, the Authority shall return the Performance Security/Supply Phase Performance Security/Performance Guarantee, as the case may be and if applicable, to the Strategic Partner and pay to the Strategic Partner only the unpaid, validly outstanding and due Fees, as specified under this Agreement, for the Services provided, on a proportionate basis, until the date of Termination. The Strategic Partner shall take appropriate Insurance Cover for hedging risks associated with the events of Force Majeure.

23.9.2 If Termination is on account of Political Force Majeure Events the Authority shall return the Performance Security/Supply Phase Performance Security/Performance Guarantee, as the case may be and if applicable at the time, to the Strategic Partner and pay to the Strategic Partner only 120% (one hundred and twenty percent) of the unpaid, validly outstanding and due Fees for the Services provided, on a proportionate basis, until the date of Termination.

23.9.3 If Termination is on account of Indirect Political Force Majeure Events the Authority shall return the Performance Security/Supply Phase Performance Security/Performance Guarantee, as the case may be and if applicable at the time, to the Strategic Partner and pay to the Strategic Partner only 110% (one hundred and ten percent) of the unpaid, validly outstanding and due Fees for the Services provided, on a proportionate basis, until the date of Termination.

### **23.10 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure provided under this Agreement; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

### **23.11 Excuse from performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be



excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **ARTICLE 24: SUSPENSION**

### **24.1 Suspension upon Strategic Partner Default**

Upon occurrence of a Strategic Partner Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Strategic Partner under this Agreement including the Strategic Partner's right to receive any Fee under this Agreement for a specified period, and (ii) exercise such rights itself or authorise any other person, to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Strategic Partner and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice; provided that upon written request from the Strategic Partner, the Authority shall extend the aforesaid period of 90 (ninety) days by a further period not exceeding 60 (sixty) days.

### **24.2. Authority to act on behalf of Strategic Partner**

24.2.1 During the period of Suspension, the Authority shall not be obliged to pay any Fee to the Strategic Partner.

24.2.2 During the period of Suspension hereunder, all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Strategic Partner under and in accordance with this Agreement and the Project shall be deemed to have been done or taken for and on behalf of the Strategic Partner and the Strategic Partner undertakes to indemnify the Authority for all costs incurred during such period.

### **24.3 Revocation of Suspension**

24.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Strategic Partner under this Agreement.

24.3.2 Upon the Strategic Partner having cured the Strategic Partner Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Strategic Partner under this Agreement.

### **24.4 Termination**

- 24.4.1 At any time during the period of Suspension under this Article 24, the Strategic Partner may by notice require the Authority to revoke the Suspension and elect to issue a Termination Notice. The Authority shall within 15 (fifteen) days of receipt of such Termination Notice, terminate this Agreement in accordance with Article 25.
- 24.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 24.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Strategic Partner Default.

## ARTICLE 25: TERMINATION

### 25.1 Termination for Strategic Partner Default

25.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Strategic Partner fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Strategic Partner shall be deemed to be in default of this Agreement (a “**Strategic Partner Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a) the Performance Security or the Performance Guarantee has been encashed and appropriated in accordance with Clause 9.2 and Clauses 9.5 and 9.8, the Strategic Partner fails to replenish or provide fresh Performance Security or Performance Guarantee within a Cure Period of 30 (thirty) days;
- b) subsequent to the replenishment or furnishing of fresh Performance Security or Performance Guarantee, as the case may be, the Strategic Partner fails to cure, within a Cure Period of 90 (ninety) days, the default for which whole or part of the Performance Security or the Performance Guarantee, as the case may be, was appropriated;
- c) the Strategic Partner is in material breach of its obligations as laid down in this Agreement with respect to any part or aspect of the Project;
- d) the Strategic Partner abandons or manifests intention to abandon its obligations under this Agreement without the prior written consent of the Authority;
- e) a breach of any of the terms and conditions of this Agreement by the Strategic Partner has caused a Material Adverse Effect;
- f) the Strategic Partner creates any Encumbrance in breach of this Agreement;
- g) the Strategic Partner repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
- h) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Strategic Partner under this Agreement, or of (ii) all or part of the assets or

undertaking of the Strategic Partner, and such transfer causes a Material Adverse Effect;

- i) an execution levied on any of the assets of the Strategic Partner has caused a Material Adverse Effect;
- j) the Strategic Partner is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Strategic Partner or for the whole or material part of its assets that has a material bearing on the Project;
- k) the Strategic Partner has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- l) a resolution for winding up of the Strategic Partner is passed, or any petition for winding up of the Strategic Partner is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Strategic Partner is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Strategic Partner are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Strategic Partner under this Agreement and provided that:
  - i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement;
  - ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Strategic Partner as at the Effective Date;
- m) any representation or warranty of the Strategic Partner herein contained which is, as of the date hereof, found to be materially false or the Strategic Partner is at any time hereafter found to be in breach thereof;
- n) the Strategic Partner submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- o) the Strategic Partner has failed to fulfil any obligation which has been deemed to be Strategic Partner Default as per the provisions of this Agreement; or
- p) the Strategic Partner commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

25.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Strategic Partner Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Strategic Partner; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Strategic Partner of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Strategic Partner to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 25.1.1 above.

## **25.2 Termination for Authority Default**

25.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (“**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Strategic Partner or due to Force Majeure. The defaults referred to herein shall include:

- a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Strategic Partner;
- b) the Authority has failed to make any payment to the Strategic Partner within the period specified in this Agreement;
- c) the Authority fails to issue the Letter of Credit at the beginning of the relevant year of the Supply Phase;
- d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

Without prejudice to any other right or remedy which the Strategic Partner may have under this Agreement, upon occurrence of an Authority Default, the Strategic Partner shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Strategic Partner shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the aforementioned Termination Notice.

### **25.3 Termination Payments**

25.3.1 Upon termination on account of a Strategic Partner Default during the Design Phase and the Supply Phase, the Authority shall be entitled to terminate this Agreement and encash the Performance Security or the Supply Phase Performance Security, as the case may be, and withdraw the Letter of Credit. In such event, the Strategic Partner shall only be entitled to the unpaid, validly outstanding and due Fees, on proportionate basis due for the Services provided till the date of Termination Notice. The Authority shall not make any other payment.

25.3.2 Upon termination on account of a Strategic Partner Default during the Operations Phase, the Authority shall be entitled to terminate this Agreement and encash the Performance Guarantee and the Strategic Partner shall be liable to the forfeiture of the Performance Guarantee. In such event, the Strategic Partner shall only be entitled to the unpaid, validly outstanding and due Fees on proportionate basis due for the Services provided till the date of Termination Notice. The Authority shall not make any other payment.

25.3.3 Upon termination on account of Authority Default during the Term, the Authority shall return the Performance Security and/or Supply Phase Performance Security and/or Performance Guarantee, as the case may be, to the Strategic Partner and shall pay 120% (one hundred and twenty percent) of unpaid, validly outstanding and due Fee on proportionate basis for the Services rendered in accordance with terms hereof prior to the date of Termination Notice.

### **25.4 Other rights and obligations of the Authority**

Upon termination of this Agreement for any reason whatsoever

25.4.1 The Authority shall be entitled to restrain the Strategic Partner and any person claiming through or under the Strategic Partner from entering upon the Site of the Project or any part of the Project; and

25.4.2 All sums claimed by any Subcontractor(s) as being due and owing for services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Strategic Partner and such Subcontractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under this Agreement, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

**25.5 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, shall survive the termination to the extent such survival is necessary for giving effect to such rights and obligations.



## **ARTICLE 26: TRANSFER REQUIREMENTS**

### **26.1 Service Continuity**

**26.1.1** Notwithstanding Article 25, upon Termination, the Strategic Partner shall comply with and conform to the following:

- a) submit to the Authority, a plan outlining the handover procedures, training of Authority staff and plan for management of personnel (the "**Service Continuity Plan**"); and
- b) the Strategic Partner shall continue discharge of obligations for a period of 60 days from the date of Termination Notice or from the date of expiry of the Term, as the case may be (the "**Service Continuity**").

### **26.2 Transfer Requirements**

**26.2.1** The Strategic Partner shall, upon the completion of the 5<sup>th</sup> (fifth) year of the Operations Phase, supply and develop at least 30 (thirty) distinct least inbreeding *L. vannamei* shrimp families and also transfer and deliver forthwith the pedigree and genetic data, including all such Intellectual Property rights associated with such data, for such families up to generation G0 ("**Pedigree Data**"), so as to facilitate the Authority in continuing selective breeding and related research and development activities at the NBC post the Term of this Agreement. For the avoidance of doubt, the Pedigree Data shall be submitted in a decrypted, unlocked, readable and extractable format. The Strategic Partner shall ensure that the origin of these families shall be preferably from diverse geographical areas to exploit maximum genetic variation. If the Strategic Partner fails to supply at least 30 (thirty) families and the resultant Pedigree Data within the timelines stipulated in this Clause 26.2.1, then the same shall be treated as a Strategic Partner Event of Default and the consequences set out in Article 25 shall follow.

**26.2.2** Upon the expiry of the Term or termination of this Agreement (whichever is earlier), the Strategic Partner shall comply with and conform to the following Transfer Requirements:

- a) ensure the handover of such Pedigree Data, free and clear of all encumbrances; For avoidance of doubt, such transfer of Pedigree Data shall include the grant of all Intellectual Property rights in respect of such Pedigree Data in favour of the Authority by way of a license, without any additional payment by the Authority so as to ensure that the Authority can continue undertaking the Services by itself

post the expiry of the Term or the termination of the Agreement, as the case may be;

b) transfer and/or deliver all Applicable Permits/Intellectual Property rights, designs, standard operating procedures, manuals, protocols relating to the Services to the extent required and permissible under Applicable Laws;

c) handover the Site, free and clear of all Encumbrances;

d) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Strategic Partner in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority or its nominee;

e) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the transfer and assignment of all rights, title and interest of the Strategic Partner in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

The abovementioned Transfer Requirements shall be fulfilled within 90 (ninety) days of the date of Termination Notice or the date of expiry of the Term, as the case may be.

### **26.3 Inspection and Cure**

Notwithstanding anything contained in this Agreement, within 60 (sixty) days from the Termination Notice or expiry of the Term, the Authority shall verify, after giving due notice to the Strategic Partner of the time and date of such verification, compliance by the Strategic Partner with the Transfer Requirements. Defaults, if any, shall be cured by the Strategic Partner at its cost

### **26.4 Vesting Certificate**

The transfer of all rights, title and interest in the Project shall be deemed to be complete on the date when Authority has paid the Strategic Partner the Fees due under this Agreement and the Strategic Partner has completed the Transfer Requirements. In such case, the Authority shall, without unreasonable delay, thereupon issue a certificate ("**Vesting Certificate**"), which will have the effect of constituting evidence of transfer by the Strategic Partner of all of its rights, title and interest in the Project in the Authority pursuant hereto, including the fulfilment of the Transfer Requirements. It is expressly agreed that any defect in the Transfer

Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority in respect of, the Project, even if all the Transfer Requirements have been complied with by the Strategic Partner.

**26.5 Transfer Costs**

The Strategic Partner shall bear and pay all costs incidental to transfer of all of the rights, title and interest of the Strategic Partner in the Project in favour of the Authority, save and except that all stamp duties payable on any deeds or documents executed by the Strategic Partner in connection with such transfer shall be borne equally between the Parties.

26.6 In the event of any dispute relating to matters covered by and under this Article 26, the Dispute Resolution Procedure shall apply

## **ARTICLE 27: ASSIGNMENT AND SUBCONTRACTING**

### **27.1 Assignment and Charges**

#### **27.1.1 Restrictions on assignment and charges**

- a) This Agreement shall not be assigned by the Strategic Partner to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- b) The Strategic Partner shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

### **27.2 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Strategic Partner, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

### **27.3 Subcontracting**

- a) The Strategic Partner shall obtain the Authority's prior approval in writing before entering into a subcontract with the Subcontractors for the performance of any part of the Services.
- b) The Strategic Partner shall remain liable to the Authority for the acts and omissions of the Subcontractor(s) and the employees of such Subcontractor(s) as if they were the acts and omissions of the Strategic Partner. The Strategic Partner shall supervise and direct the work of all Subcontractors and shall be responsible for performance of all the Scope of Services including methods, techniques, sequences and procedures of, and for coordinating the work of the Subcontractors. The Strategic Partner shall at all times ensure and cause the Subcontractors not to take any action or commit any act or omission which could release, void, impair the Project and the Services provided herein. The Strategic Partner shall implement

and shall ensure that each of its Subcontractors adhere to Applicable Laws, Applicable Permits and Good Industry Practice.

- c) The Strategic Partner shall be solely responsible for paying each Subcontractor and any other person to whom any amount is due from the Strategic Partner for subcontracting any of the Scope of Services. The Strategic Partner shall take all reasonable steps and actions to ensure that such Subcontractor performs such Scope of Services in accordance with its Subcontract which shall not be in violation of any of the terms and conditions set forth in this Agreement.

## **ARTICLE 28: INDEMNITY**

### **28.1 General Indemnity**

28.1.1 The Strategic Partner will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises (the “**Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Strategic Partner of any of its obligations under this Agreement or any related agreement or on account of any Deficiency in the provision of Services by the Strategic Partner, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Indemnified Persons.

28.1.2 The Authority will indemnify, defend, save and hold harmless the Strategic Partner against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of the breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Strategic Partner of its obligations under this Agreement, save and except where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Strategic Partner its subsidiaries, affiliates, Subcontractors, servants or agents, the same shall be the liability of the Strategic Partner.

### **28.2 Indemnity by the Strategic Partner**

28.2.1 Without limiting the generality of Clause 28.1, the Strategic Partner shall fully indemnify, hold harmless and defend the Indemnified Persons, including the Authority, from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Strategic Partner to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Strategic Partner in respect of the income or other taxes of the Strategic Partner’s Subcontractors and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Strategic Partner or any of its Subcontractors which are payable by the Strategic Partner or any of its Subcontractors.

28.2.2 Without limiting the generality of the provisions of this Article 28, the Strategic Partner shall fully indemnify, hold harmless and defend the Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Strategic Partner or by the Strategic Partner's Subcontractors in performing the Strategic Partner's obligations or in any way incorporated in the Project or related to the Agreement. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Strategic Partner shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Strategic Partner, is held to have infringed any third party's intellectual property rights, the Strategic Partner shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority from the party whose rights are infringed. If the Strategic Partner is unable to secure such licence within a reasonable time, the Strategic Partner shall, at its own expense, take steps to ensure that it no longer infringes the said intellectual property rights.

### **28.3 Notice and Contest of Claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 28 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **28.4 Defence of Claims**

28.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted

against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 28, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

28.4.2 If the Indemnifying Party has exercised its rights under Clause 28.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

28.4.3 If the Indemnifying Party exercises its rights under Clause 28.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or



- ii. that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 28.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **28.5 No Consequential Claims**

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **28.6 Survival on Termination**

The provisions of this Article 28 shall survive termination.

## **ARTICLE 29: DISPUTE RESOLUTION**

### **29.1 Dispute Resolution**

29.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 29.2.

29.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **29.2 Conciliation**

In the event of any Dispute between the Parties, the Parties may call upon the Independent Committee, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Committee the Parties may require such Dispute to be referred to the Project Director of the Authority and the Chairman of the Strategic Partner or any other designated official of the Strategic Partner for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 29.1.1 or such longer period as may be mutually agreed by the Parties, the Parties may refer the Dispute to arbitration in accordance with the provisions of Clause 29.3.

### **29.3 Arbitration**

29.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 29.2, shall be finally decided by reference to arbitration in accordance with this Clause 29.3. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The venue of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English.

- 29.3.2 The Authority shall appoint one arbitrator and the Strategic Partner shall appoint another arbitrator and the two appointed arbitrators shall appoint a third arbitrator in accordance with the Arbitration Act.
- 29.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 29 shall be final and binding on the Parties as from the date it is made, and the Strategic Partner and the Authority agree and undertake to carry out such Award without delay.
- 29.3.4 The Parties agree that an Award may be enforced against the Strategic Partner and the Authority and their respective assets wherever situated.
- 29.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **ARTICLE 30: CONFIDENTIALITY**

- 30.1 The Parties shall ensure that all Confidential Information is kept confidential and shall not, without the previous written consent of the other Party, use, copy, publish, disclose or otherwise deal with, nor cause nor permit the Subcontractors, agents, employees, directors, advisors or any persons for whom it is contractually or otherwise responsible for, to use, copy, publish, disclose or otherwise deal with any Confidential Information, otherwise than for the performance of its obligations under this Agreement, disclosure to its advisors, the financiers and their advisors or counsel or otherwise as required under the Applicable Laws or local laws. The Parties shall ensure that each Party shall not knowingly or deliberately disclose or release Confidential Information to a third party except with the express written consent of the other Parties. For the avoidance of doubt, Confidential Information, for the purpose of this Agreement and specifically this Article 30 shall not include: a) information that the receiving party can demonstrate through tangible records was in its possession prior to disclosure by the other Party and was not then subject to any restriction on disclosure; b) information that becomes generally available to the public without the fault of the receiving party; and c) information that the disclosing party regularly provides to third parties without restriction on disclosure.
- 30.2 In the event that any Party is required to disclose any Confidential Information by an order of a court or under the requirements of Applicable Laws or stock exchange listing rules, such Party must promptly notify the other Party of such requirement so that the other Party has the opportunity to contest such disclosure or seek protective orders in respect thereof. Any such disclosure shall be made in the form mutually agreed between the Parties.
- 30.3 The defaulting Party shall indemnify the non defaulting Party in case of breach of this Clause. If any Confidential Information is received by a third party from the receiving party, and that third party makes use of such information to cause harm or monetary loss to the other Party or uses the Confidential Information for their personal gain/ monetary gain, the receiving party shall compensate the Party owning the Confidential Information for the loss suffered as well as for the value of gain derived by such third party. Furthermore, notwithstanding anything contained in this Agreement, each of the Parties acknowledge that the Confidential Information of the other party is important, material and includes confidential trade secrets of such Party such that breach of the promises set forth in this Article 30 would cause irreparable damage to the non-breaching Party and that in the event of such breach, the non-breaching Party shall have in addition to any and all remedies under law or in this Agreement, the right to seek an injunction or specific performance or equitable relief post the completion of the arbitration proceedings in Clause 29.3.

## **ARTICLE 31: MISCELLANEOUS**

### **31.1 Governing Law and Jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Clause 29.3, the courts at Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

### **31.2 Waiver of Immunity**

Each Party unconditionally and irrevocably:

31.2.1 agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

31.2.2 agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

31.2.3 waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

31.2.4 consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **31.3 Waiver**

31.3.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

31.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 31.4 **Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

#### 31.5 **Survival**

Termination shall:

- (a) not relieve the Strategic Partner or the Authority as the case may be, of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

#### 31.6 **Entire Agreement**

This Agreement, Recitals and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

### **31.7 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

### **31.8 No Partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or Authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **31.9 Third Parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **31.10 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

### **31.11 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- 31.11.1 in the case of the Strategic Partner, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below

or to such other person as the Strategic Partner may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Chennai/Sirkazhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Strategic Partner may from time to time designate by notice to the Authority;

- 31.11.2 in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Project Director of the Authority with a copy delivered to the Authority's representative or such other person as the Authority may from time to time designate by notice to the Strategic Partner; provided that if the Strategic Partner does not have an office in Chennai/Sirkazhi it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
- 31.11.3 any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

#### 31.12 **Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

#### 31.13 **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.



## ARTICLE 32: DEFINITIONS

### 32.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Affected Party**” shall have the meaning set forth in Clause 23.1;

“**Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by Government of India or the State Government of Kerala and State Government of Tamil Nadu including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the provision of Services at the Project, during the subsistence of this Agreement;

“**AQF**” shall mean the Aquatic Quarantine Facility operated by the Government of India in Chennai;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a

company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority**” shall mean the Rajiv Gandhi Centre for Aquaculture.

“**Authority Default**” shall have the meaning set forth in Clause 25.2.1;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having Authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Award**” shall have the meaning set forth to it in Clause 29.3.3;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Strategic Partner in response to the request for proposal (RFP) and the provisions thereof;

“**Bid Due Date**” shall mean the last date for the submission of the Bids under and in accordance with the terms of the RFP Volume I;

“**Bid Security**” means the security provided by the Strategic Partner to the Authority along with the Bid amounting to INR 6 million/USD 85,000 only (Indian Rupees Six Million/ United States Dollars Eighty Five Thousand Only), in accordance with the Bid documents, and which is to remain in force until substituted by the Performance Security;

“**BMC**” shall mean the Brood Multiplication Centre for *L. vannamei* shrimps being operated by the Authority in Vishakhapatnam, Andhra Pradesh, India;

“**Change in Law**” means the occurrence of any of the following after the Bid Due Date:

- a) the enactment of any new Applicable Law;
- b) the repeal, modification or re-enactment of any existing Applicable Law;
- c) the commencement of any Applicable Law which has not entered into effect until the Bid Due Date;

- d) a change in the interpretation or application of any Applicable Law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Due Date.
- e) any change in the rates of GST and any other indirect tax as applicable to the Project

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Strategic Partner; (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised environmental laws; (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; or (iv) any rules or regulations stipulated by any regulatory procurer having jurisdiction over the Project in respect of the standards of Service; or (v) any change in direct taxes.

**“Change of Scope”** shall have the meaning set forth to it in Clause 16.1.1;

**“Change of Scope Notice”** shall have the meaning set forth to it in Clause 16.2.1;

**“Change of Scope Order”** shall have the meaning set forth to it in Clause 16.2.3;

**“Commissioning”** shall mean the commissioning of the NBC to the satisfaction of the Authority such that the NBC may be put into operation by the Strategic Partner and the Authority;

**“Completion Notice”** shall have the meaning forth to it in Clause 19.1 A a);

**“Completion of Design Phase”** shall have the meaning set forth to it in Clause 11.1.7

**“Concept Design”** shall mean the plan to be submitted by the Strategic Partner in accordance with the requirements and timelines stated in Part A of Schedule A and shall include, but not be limited to, details such as basic floorplan design, choice of technology, bio security measures to be adopted.

**“Concept Design First Draft”** shall have the meaning set forth in Clause 11.1.3 (a);

**“Concept Design Final Draft”** shall have the meaning set forth in Clause 11.1.3 (e)

**“Concept Presentation”** shall have the meaning set forth in the RFP;

**“Conditions Precedent”** shall have the meaning set forth in Clause 4.1.1;

**“Confidential Information”** shall mean technical, product, financial, marketing or business information that is marked or otherwise designated as confidential, proprietary or trade secrets of the providing party and shall also include but not be limited to the present and future business activities, business and marketing plans, finances, financial data, data systems, trade secrets, inventions, research, technological know-how, proprietary technical documentation (including broodstock information and data), products, developments, processes, designs, drawings, formulae, markets, software, computer programs, algorithms and agreements with third parties regarding any of the foregoing which have been designated in writing as confidential or proprietary or if given, orally, is confirmed in writing as having been disclosed as confidential or proprietary within a reasonable period of time post oral disclosure;

**“Consortium”** means any combination of persons that have formed a consortium or association by fulfilling the requirements set out in the RFP including executing a joint bidding agreement, for the purposes of submitting a Bid and for implementing the Project, if such consortium or association is declared as the Strategic Partner;

**“CP Waiver Notice”** shall have the meaning set forth to it in Clause 4.1.5;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Strategic Partner requires any reasonable action by the Strategic Partner that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

**“Damages”** shall mean the mutually pre-agreed genuine estimate of the loss suffered by relevant Party on account of non- performance and/or non-observance of obligation(s) or any covenants by other Party;

**“DPR”** shall mean the detailed project report to be submitted by the Engineering Consultant for the purpose of designing and constructing the NBC and such DPR shall include the detailed designs, drawings for construction of the NBC by the Construction Agency;

**“Deficiency”** means any shortcoming in the Services provided by the Strategic Partner during the Operations Phase, and which shall include, but shall not be limited to, any event of Operations Phase Default, as defined and listed out in Clause 12.5, or any failure to comply with the terms and conditions of the Agreement including, Applicable Laws, Applicable Permits, and Good Industry Practice during the Operations Phase;

**“Designated Number of Families”** shall mean the *[insert number of families]*<sup>10</sup> distinct, least inbreeding families of **SPF-SPT** *L. vannamei* shrimps whose PLs are to be supplied by the Strategic Partner as part of each Evaluation Stream, in accordance with the submission and declaration made the Strategic Partner as part of its Bid;

**“Design Phase”** shall mean the time period specified and provided in Clause 3.1.2 (a);

**“Design Phase Completion Certificate”** shall have the meaning set forth to it in Clause 11.1.7;

**“Dispute”** shall have the meaning set forth in Clause 29.1.11;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 29;

**“Document”** or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**“Engineering Consultant”** shall mean the design and engineering firm appointed by the Authority to prepare the DPR in accordance and conformance with the Concept Design prepared by the Strategic Partner and thereafter oversee the Commissioning of the NBC;

**“Evaluation Stream”** shall mean the stream of **SPF-SPT** PL of *L. vannamei* shrimps, consisting of the Designated Number of Families, annually, supplied by the Strategic Partner for the purpose of conducting field trial in India so as to identify the best performing shrimp families;

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<sup>10</sup> The number of families to be supplied in order to meet the Project objectives, shall be filled in at the time of execution of this Agreement in accordance with the number of families which was proposed by the Strategic Partner in its Concept Presentation so as to meet the Project objective.

**“Evaluation Stream Cohort”** shall mean one of the two cohorts of shrimps, supplied as part of the Evaluation Stream, and each such cohort shall necessarily consist of half the number of Designated Number of Families;

**“Effective Date”** means the date on which the Conditions Precedent of both the Parties have been met and shall be deemed to be the date of commencement of the Term with respect to the Project;

**“Encumbrances”** shall mean any mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy;

**“Fee”** shall have the meaning set forth to it in Clause 19.1;

**“Fee for Pedigree Data”** shall have the meaning set forth to it in Clause 19.1 E;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning set forth to it in Clause 23.1;

**“Germplasm Stream”** shall mean the stream of **SPF-SPT** PL of *L. vannamei* shrimps supplied to the BMC and which have been derived from conducting selective breeding of the broodstock of the best performing shrimp families as analysed during the field trial of the shrimps of the Evaluation Stream.

**“Germplasm Stream Cohort”** shall mean any one of the two cohorts of the Germplasm Stream supplied to the BMC, in a year, in accordance with Article 15.

**“GOI”** means the Government of India;

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Strategic Partner engaged in the same type of services as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Strategic Partner in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Government Instrumentality”** means any department, division or sub-division of the State Government or the Government of India and includes any commission, board, Government, agency or municipal and other local Government or statutory body including Panchayat under the control of the Government of India, and having jurisdiction over the performance of all or any of the services or obligations of the Strategic Partner under or pursuant to this Agreement;

**“Half Yearly Meeting”** shall have the meaning set forth to it in Clause 14.2;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Clause 28.3;

**“Indemnified Persons”** shall have the meaning set forth to it in Clause 28.1;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Clause 28.3;

**“Independent Committee”** shall have the meaning set forth to it in Clause 18.1;

**“Indirect Political Event”** shall have the meaning set forth in Clause 23.3;

**“Intellectual Property”** means recognized protectable intellectual property of a Party such as patents, utility models, copyrights, corporate names, trade names, trademarks, trade dress, service marks, applications for any of the foregoing, software, firmware, trade secrets, mask works, industrial design rights, rights of priority, know how, design flows, methodologies and any and all other intangible protectable proprietary information that is legally recognized;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Strategic Partner pursuant to Article 21, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

**“Issuing Bank”** shall have the meaning set forth to it in Clause 19.1 B a);

**“Lead Member”** shall mean the lead member of the Consortium;

**“Letter of Credit”** shall have the meaning set forth to it in Clause 19.1 B a)

**“LOA”** means the letter of acceptance referred to in Recital E;

**“Lump Sum Fee”** shall have the set forth to it in Clause 19.1 A a);

**“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**“Milestone”** shall refer to each milestone within the Design Phase as specified in Part A of Schedule C;

“**Milestone Completion Certificate**” shall mean the certificate to be issued by the Authority evidencing the completion of each Milestone within the Design Phase;

“**Monitoring Plan**” shall have the meaning set forth to it in Clause 14.4;

“**Monthly Fee for Operations Phase I**” shall have the meaning set forth in Clause 19.1 C a);

“**Monthly Fee for Operations Phase II**” shall have the meaning set forth in Clause 19.1 D a);

“**MPEDA**” shall mean the Marine Products Export Development Authority;

“**Non-Political Event**” shall have the meaning set forth in Clause 23.2;

“**Nominated Bank**” shall have the meaning set forth in Clause 19.1 B a);

“**NBC**” shall mean the Nucleus Breeding Centre for *L. vannamei* shrimps proposed to be developed, constructed and operated at the Site.

“**O&M Fee**” shall have the meaning ascribed to it in Clause 19.1 D g);

“**Operations Phase**” shall mean collectively the Operations Phase I and Operations Phase II;

“**Operations Phase Default**” shall have the meaning ascribed to it in Clause 12.5;

“**Operations Phase I**” shall mean the time period specified in Clause 3.1.2 (c);

“**Operations Phase II**” shall mean the time period specified in Clause 3.1.2 (d);

“**Operations Phase I Performance Guarantee**” shall have the meaning set forth in Clause 9.4;

“**Operations Phase II Performance Guarantee**” shall have the meaning set forth in Clause 9.7;

“**Operations Phase I Performance Guarantee Period**” shall have the meaning set forth in Clause 9.6;

“**Operations Phase II Performance Guarantee Period**” shall have the meaning set forth in Clause 9.9;



“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

“**Payment Milestone**” shall mean the payment milestones set out in Schedule D;

“**Pedigree Data**” shall have the meaning set forth in Clause 26.2.1;

“**Performance Guarantee**” shall have the meaning set forth in Clause 9.9;

“**Performance Parameters**” shall refer to the parameters set out in Schedule I of this Agreement and which lays down the performance parameters required to be fulfilled by the **SPF-SPT PL** of *L. vannamei* shrimps being supplied as part of the Evaluation Stream;

“**Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Performance Security Period**” shall have the meaning set forth to it in Clause 9.3;

“**Phase**” shall mean any of the phases of this Project i.e. Design Phase, Supply Phase and/or the Operations Phase;

“**PL**” shall mean post larvae of *L. vannamei* shrimps;

“**Political Event**” shall have the meaning set forth in Clause 23.4;

“**Project Completion Schedule**” shall mean Schedule C;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**RFP**” shall have the meaning set forth to it in Recital D;

“**Safety Requirements**” shall have the meaning set forth in Clause 20.2;

“**Scope of the Services**” shall have the meaning set forth in Schedule A;

“**Scheduled Milestone Completion Date(s)**” shall mean the scheduled completion date for each Milestone as specified in Schedule C for the Design Phase;

“**Scheduled Design Phase Completion Date**” shall have the meaning set forth to it in Schedule C;

“**Scheduled Operations Phase Date**” shall have the meaning set forth in Schedule C;

“**Security Requirements**” shall have the meaning set forth to it in Clause 20.1;

“**SP-NBC**” shall have the meaning set forth to it in Clause 15.2 (a);

“**SPF**” shall mean Specific Pathogen Free which shall in turn mean that such shrimps shall be free of the OIE listed diseases/pathogens;

“**SPT**” shall mean Specific Pathogen Tolerant which shall in turn mean that such shrimps shall be tolerant to one or more OIE listed or non-listed important (decided mutually by and between the Parties) diseases/pathogens;

“**SPF-SPT**” shall mean that SPF shrimps families having one or more SPT characteristics;

“**Strategic Partner**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals

“**Strategic Partner Default**” shall have the meaning set forth to it in Clause 25.1.1;

“**Services**” shall have the meaning set forth to it in Clause 2.1 and shall include all the services which have been detailed in Schedule A;

“**Site**” means the area allocated for the Project and for setting up of the NBC and more specifically set out in Schedule B;

“**State**” means the State of Tamil Nadu and “**State Government**” means the government of that State;

“**Subcontractor**” means the person or persons, as the case may be, with whom the Strategic Partner has entered into any contract or any other agreement or contract for provision of the Services or matters incidental thereto, for and on behalf of the Strategic Partner. The Strategic Partner shall and will remain solely responsible to the Authority for the overall obligations and liabilities of the Contractor engaged by the Strategic Partner;

“**Supply Fee**” shall have the meaning ascribed to it in Clause 19.1 B c);

“**Supply Phase**” shall have the meaning provided to it in Clause 3.1.2 (b);

“**Supply Phase Performance Security**” shall have the meaning ascribed to it in Clause 15.6;

“**Supply Phase Long Stop Period**” shall have the meaning set forth in Clause 3.1.5;

“**Suspension**” shall have the meaning set forth in Clause 24.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, GST, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the Services charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Term**” means the period set out in Clause 3.1.3 of this Agreement;

“**Termination**” means the expiry or earlier termination of this Agreement hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party after terminating this Agreement in accordance with Article 25;

“**Training Plan**” shall have the meaning set forth to it in Clause 14.6;

“**Transfer Requirements**” shall mean the requirements set forth in Clause 26.2.2;

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND  
DELIVERED

For and on behalf of AUTHORITY by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of STRATEGIC PARTNER by:

(Signature)

(Name)

(Designation)

## SCHEDULE A: SCOPE OF SERVICES

The aim and objective of this Project is to develop state-of-the-art NBC in India with cutting age technology to produce high quality (growth & fecundity comparable to broodstock available from other sources and SPF with disease tolerance characters) *L. vannamei* broodstock in the NBC and at the expiry of the Term to ensure that the NBC has capacity to produce good quality broodstock for at least for another 20 years. The Strategic Partner may suggest alterations and additions to this Scope of Services during the Concept Presentation which will be scrutinized by the Authority and the appointed Independent Committee)

The Scope of Services of the Strategic Partner shall be in three phases over 9 (nine) years from the Effective Date

- Design Phase
- Supply Phase
- Operations Phase

### PART A-Phase I: Design Phase

SI. No.	Deliverables/Activities to be performed	Time for Completion
1	<p><u>Preparation of a Concept Design</u></p> <p>The Strategic Partner is to prepare a Concept Design and submit the same to the Authority. Concept Design to include the following:</p> <ul style="list-style-type: none"> <li>• Basic floorplan design of the NBC, the broad goals of the breeding program and the preliminary process flow and work plan which is to be adopted at the NBC. For the purpose of development of the basic floorplan design, the Authority shall provide the Strategic Partner detailed Site layout.</li> <li>• Choice of technology to be adopted e.g. Raceway vs Circular Tanks systems including the rationale for the choice of technology, the cost benefit analysis of adopting such technology and the complete system of design for breeding, growth ponds (Indoor / Outdoor) and performance testing under simulated conditions.</li> <li>• Feed options which shall be adopted at the NBC</li> <li>• The design of the water management systems to be put in place at the NBC including Reservoirs systems, Water intake / purification / re – circulation systems, Water distribution systems, Water discharge and waste water treatment and Effluent treatment systems</li> <li>• Disease surveillance strategies which are to be adopted at the NBC including a preliminary design of the disease challenge facility</li> <li>• Setting out the laboratory requirements at the NBC and the requirement of laboratory related equipment. Set out the design of the micro-biology, PCR diagnostic and infectivity study laboratories which shall be capable of identifying and testing for pathogens such as <u>Viruses</u>: TSV, WSSV, YHV/GAV/LOV, IHNV, BP, MBV, BMN, HPV, IMNV;</li> </ul>	<p><b>Submission of Concept Design First Draft- within 2 months from the Effective Date</b></p> <p><b>Submission of Concept Design Final Draft- within 4 months from Effective Date</b></p>

	<p><u>Prokaryote:</u> NHP, RLBMHD, EMS/AHPND</p> <p><u>Protozoan:</u> Microsporidians, Haplosporidians, Gregarines</p> <ul style="list-style-type: none"> <li>• Also set out the requirement of a Molecular markers development facility and set out its capabilities as well as set out the requirement of the water quality labs and any other laboratories and related equipment needed for the NBC.</li> </ul>	
2	<p><u>Preparation of Standard Operating Procedures (SOPs)/Manuals/Protocols</u></p> <p>During the Design Phase, the Strategic Partner shall be obligated to prepare certain standard operating procedures (SOP)/manuals/protocols for the NBC. These SOPs/manuals/protocols shall include:</p> <ul style="list-style-type: none"> <li>• Training manuals and training programme for scientists running the research programme</li> <li>• Training programme for the support staff for maintaining bio – security</li> <li>• Manual/SOP for selective breeding protocols including larval rearing and maturation- this shall include a basic selection protocol to prevent in-breeding of offspring and a basic breeding plan for breeding post larvae shrimps.</li> <li>• Manual/SOP for feeding protocols and live feed management</li> <li>• Manual/SOP for grow-out evaluation</li> <li>• Manual/SOP for nursery rearing and associated protocols</li> <li>• Manual/SOP for field trial protocols- shall include written hatchery and grow-out evaluation protocols for evaluation farming at Indian conditions, shrimp sampling procedures, data collection methods, experimental design, data file templates, data reporting instructions, etc.</li> <li>• Manual/SOP for genetic tagging</li> <li>• Manual/SOP for lab testing protocols</li> <li>• Bio – security protocols for humans / livestock / feed / water / equipment etc.</li> </ul>	<p><b>To be submitted to the Authority within 5 months from the Effective Date</b></p>

### **PART B- Supply Phase**

SI. No.	Deliverable/ Activities	Time for Completion
1	Import/supply of the Designated Number of Families of <b>SPF-SPT</b> PL of <i>L. vannamei</i> , annually, in two cohorts, for field trial in India, as part of the <b>Evaluation Stream</b> . Upon completion of the field trial by the Strategic Partner and the Authority, in India, the growout data is to be utilized by the Strategic Partner and the best performing families are to be identified on the basis of parameters	<b>This procedure and supply requirement shall continue and remain in place throughout the</b>

<p>such as growth, reproduction strength and disease tolerance. The shrimps of the best performing families shall be grown to broodstock size at the SP-NBC and the said broodstock shall be selectively bred at the SP-NBC and new generation of shrimp families shall be derived. The Strategic Partner shall supply at least 120,000 <b>SPF-SPT</b> PL of <i>L. vannamei</i> of the new families derived from selective breeding at the SP-NBC to the BMC operated by the Authority i.e. <b>the Germplasm Stream</b>, such that 60,000 (sixty thousand) broodstock may be produced by the BMC, annually.</p>	<p><b>Supply Phase.</b> <b>Please refer to the terms of Article 15 of this Agreement for further explanation.</b></p>
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**PART C: Operations Phase**

<b>Sl. No.</b>	<b>Deliverable/Activities to be performed</b>	<b>Time for Completion</b>
<p><b>1</b></p>	<p><u>Transfer of Microsatellite markers for parentage testing:</u></p> <p>The Strategic Partner shall transfer a microsatellite marker suite (at least 10 markers; including protocols) to the Authority. The Strategic Partner should provide training to Authority’s staff on sample collection, preparation, and amplification, as well as marker scoring and parentage assignment (using software). Throughout this Phase, the Strategic Partner should provide known test samples to the Authority for the purpose of verifying the Authority’s protocols/results for microsatellite genotyping. Detailed strategies to implement above requirements need to be furnished.</p>	<p><b>Within 3 (three) months from Commissioning of NBC.</b></p>
<p><b>2</b></p>	<p><u>Development and transfer of SNP markers to identify QTLs of desirable traits:</u></p> <p>The Strategic Partner will help develop a large number of SNP markers to identify QTLs of desirable traits, such as shrimp growth, disease tolerance and survival in India which could be integrated into the genetic selection program of the Authority. SNPs could also be utilized for parentage assignment/confirmation tasks.</p>	<p><b>Between the 2<sup>nd</sup>-4<sup>th</sup> years of the Operations Phase</b></p>
<p><b>3</b></p>	<p><u>Production of first batch of shrimps for Evaluation and Selection</u></p> <p>Strategic Partner should be present at the NBC during all critical phases of the first ES (Evaluation Stream) field trial to oversee breeding program activities, family production, train relevant Authority staff, adjust SOPs (if needed), implement evaluation protocols, assist with reproductive data collection, selection of ES families and transfer of ES families to brood stock module.</p>	<p><b>To take place at the start of the 1<sup>st</sup> year of the Term</b></p>
<p><b>4</b></p>	<p><u>Selective Breeding Activities</u></p>	

	<ul style="list-style-type: none"> <li>• Rearing of breeding stock to reproductive size</li> <li>• Inducing maturation in captivity</li> <li>• Mating through natural or artificial insemination.</li> <li>• Isolation of each spawn as an individual family</li> <li>• Larval rearing of each family to advanced post larvae</li> <li>• Rearing of post larvae to 1-3 g</li> <li>• Tagging of individuals within each family with a unique combination of elastomer dyes / chips or any other suitable methods</li> <li>• Comparison of performance of families within the NBC, field trials and laboratory challenge trials</li> <li>• Selection of families with preferred traits – Details of selection procedure and selection intensities at different operational level of breeding programme (<i>i.e.</i> spawn size; number of viable nauplii / Post-larvae (PL) or juvenile shrimp from all families) need to be formulated</li> <li>• Grow-out of preferred families to reproductive size</li> </ul>	<p><b>To take place on a regular basis during the Operations Phase</b></p>
<p><b>5</b></p>	<p><u>Data Analysis post field trial/grow-out trial</u></p> <p>The Strategic Partner shall be involved in analysis of the reproductive and grow-out data taken from each grow-out/field trial. The Strategic Partner shall analyse the reproductive and grow out performance data for each ES (Evaluation Stream) grow out trial. The Strategic Partner should provide Authority with the list of selected shrimp families from such ES grow-out/field trial.</p>	<p><b>Within 3 (three) weeks of conclusion of each field trial during Operations Phase.</b></p>
<p><b>6</b></p>	<p><u>Training Activities</u></p> <ul style="list-style-type: none"> <li>• During this Operations Phase, the Strategic Partner shall provide training to the Authority’s staff on the following topics/aspects such as start-up &amp; stocking of PLs, brood stock grow-out, maturation &amp; nauplii production, hatchery and PL production, nursery management, tagging of PLs or juveniles, data collection, parentage analysis using microsatellites &amp; SNP markers, family-based pedigree maintenance (calculation of EBV &amp; inbreeding, Genetic gain etc.), disease surveillance and bio-security issued related to shrimp farming.</li> <li>• Strategic partner should provide training to Authority’s personnel on sample collection, preparation, and amplification, as well as marker scoring and parentage assignment (using software).</li> </ul>	<p><b>There shall be at least 3 (three) trainings per year and the Authority may even request the Strategic Partner to provide for further training sessions.</b></p>

7

Monitoring Activities

- The Strategic Partner should periodically inspect breeding program activities for quality control purposes. A detailed plan should be furnished for such monitoring activities and such plan shall necessarily mention the manner in which the Strategic Partner shall endeavour to remediate any problem or shortcoming in the selective breeding program and other research and development activities being undertaken at the NBC.
- Only during Operations Phase I, the Strategic Partner shall deploy a minimum of 1 (one) personnel for monitoring of the Project at the Site. The personnel shall be stationed at the Site for a continuous period of three weeks, followed by a cooling off period of one week (where the personnel shall not be required to be present at the Site) followed by deployment of the personnel for a three week period again. This procedure of deployment shall take throughout the Operations Phase I. The aforesaid personnel shall have the following qualifications:

SI. No	Position	Qualification	No. of persons
1	Team Member	<ul style="list-style-type: none"> <li>• Masters in shrimp breeding/crustacean breeding or any related aquaculture field</li> <li>• Five-ten (5-10) years in experience in selective breeding of <i>L. vannamei</i></li> </ul>	1

- The Strategic Partner shall ensure that throughout the Operations Phase, the Strategic Partner and its personnel remains available for monitoring the Project through answering queries, grievances, comments and providing clarifications to the Authority, whether orally or in writing, as the Authority may deem necessary.
- Strategic Partner to also ensure periodic visits to the Site of the NBC to address grievances, queries and resolve problems that the Authority may be facing in operating the nucleus breeding program.
- In addition to the above, the Strategic Partner and the Authority to mandatorily have half yearly review meetings

**The Monitoring Plan for the first year of Operations Phase should be submitted 30 days prior to the commissioning of the NBC and subsequent monitoring plans 30 days prior to beginning of each year of Operations Phase.**



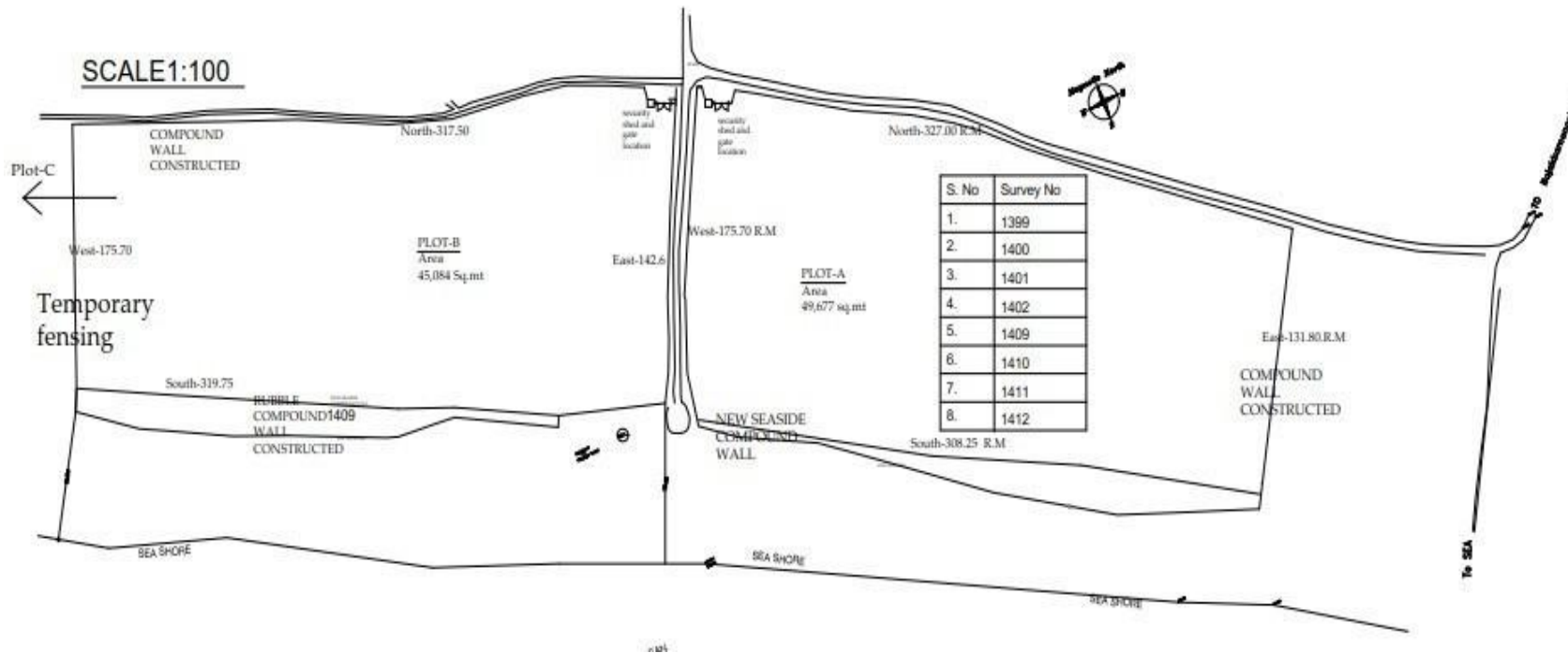
	to determine progress of the nucleus breeding program. This half yearly review is to take place in India.	
<b>8</b>	<p><u>Handover Requirements</u></p> <p>Strategic Partner should transfer to the Authority pedigree information (breeding and phenotypic records) with all relevant data for all direct ancestors of shrimp families for a minimum of 30 (thirty) <i>L. vannamei</i> shrimp families from the G0 generation, present at the NBC i.e. the Pedigree Data, so that the Authority may continue family based breeding efforts without assistance from the Strategic Partner after the completion of the term of the Agreement. The Strategic Partner shall ensure that the origin of the abovementioned families shall be preferably from diverse geographical areas so as to ensure and exploit maximum genetic diversity.</p>	<p><b>Transfer of such families and their Pedigree Data to happen at least two years prior to the completion of the Term (i.e. during 8<sup>th</sup> - 9<sup>th</sup> Years of the Term)</b></p>
<b>9</b>	<p><u>Re-population requirements</u></p> <p>The Strategic Partner should be prepared to re-populate the NBC if the shrimp families being developed at the NBC get infected with diseases, thereby making further breeding impossible.</p>	<p><b>Continuing obligation throughout the Operations Phase.</b></p>

## SCHEDULE B: SITE DETAILS

The Site for the NBC is situated at Thekkurichi village, Rajakkamangalam, Kanyakumari district, Tamil Nadu, India with an approximate area of 35 acres.

The site map, including the dimensions of the Site has been provided herein below:

NUCLEAR BREEDING CENTRE(NBC), LAYOUT AT NEENDAKARAI B VILLAGE, THEKKURICHI, GANAPATHIPURAM(POST), AGASTEESWARAM T.K, KANYAKUMARI -DISTRICT-629502



## SCHEDULE C: PROJECT COMPLETION SCHEDULE

The Strategic Partner is required to provide the Services for a period of 9 (nine) years from the Effective Date (Term).

The Services to be provided are divided in milestones, as provided herein below:

### Part A: Design Phase

Milestone	Scheduled Milestone Completion Date
Project Milestone 1: Submission of Concept Design First Draft	2 (two) months from the Effective Date
Project Milestone 2: Submission of Concept Design Second Draft	4 (four) months from the Effective Date
Project Milestone 3: Submission of SOPs, manuals and training and operation protocols	5 (five) months from the Effective Date
Project Milestone 4: Finalization of DPR submitted by the Engineering Consultant	Within 6 (six) months from the Effective Date (“Scheduled Design Phase Completion Date”)

### Part B: Supply Phase

Activities
a) Supply of two cohorts of Evaluation Stream of PL of <i>L. vannamei</i> in each year of the Supply Phase. In total, six cohorts of Evaluation Stream shall be supplied during the Supply Phase. The details have been provided in Article 15.
b) Supply of two cohorts of Germplasm Stream of PL of <i>L. vannamei</i> in each year of the Supply Phase. In total, six cohorts of Evaluation Stream shall be supplied during the Supply Phase. The details have been provided in Article 15.

### Part C: Operations Phase

The specific activities and deliverables for the Services during the Operations Phase has been set out in Part C of Schedule A. The Operations Phase shall be deemed to be complete on the date of expiry of the Term.

## SCHEDULE D: PAYMENT MILESTONES

The tables below sets out the Payment Milestones:

<b>Payment Milestones – Design Phase</b>	
<b>Payment Milestones</b>	<b>% of Lump Sum Fee</b>
Submission of Concept Design First Draft	33%
Submission of Concept Design Second Draft	34%
Submission of SOPs, manuals and protocols	33%

<b>Payment Terms- Supply Phase</b>	
Fee payable for supply of each cohort of Evaluation Stream	US\$ [**] <sup>11</sup>
Fee payable for supply of each cohort of Germplasm Stream	US\$ [**] <sup>12</sup>

<b>Payment Terms – Operations Phase I</b>	
Monthly Fee to be paid by the Authority to the Strategic Partner during Operations Phase I	US \$ [**] <sup>13</sup>

<b>Payment Terms – Operations Phase II</b>	
Monthly Fee to be paid by the Authority to the Strategic Partner	US \$ [**] <sup>14</sup>

<b>Payment Terms – Transfer of Pedigree Data</b>	
Fee for Pedigree Data to be paid by the Authority to the Strategic Partner	US \$ [**] <sup>15</sup>

<sup>11</sup> To be filled in as per the Financial Bid submitted by the Strategic Partner

<sup>12</sup> To be filled in as per the Financial Bid submitted by the Strategic Partner

<sup>13</sup> To be filled in as per the Financial Bid submitted by the Strategic Partner

<sup>14</sup> To be filled in as per the Financial Bid submitted by the Strategic Partner

<sup>15</sup> To be filled in as per the Financial Bid submitted by the Strategic Partner

**SCHEDULE E: FORMAT OF BANK GUARANTEE**

**PART A- PERFORMANCE SECURITY**

[on appropriate stamp paper]

Dated [●]

Authority

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

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

**IN FAVOUR OF:**

RAJIV GANDHI CENTRE FOR AQUACULTURE represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

**WHEREAS**

1. We understand that [●], (the “**Strategic Partner**”) has entered into an Agreement dated [●](the “**Agreement**”), with the Authority whereby the Strategic Partner has undertaken to provide the Services, subject to and in accordance with provisions of the Agreement.
2. The Agreement requires the Strategic Partner to furnish a Performance Security to the Authority in a sum of Rs. [●] (Rupees [●]) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Design Phase and until completion of 60 (sixty) days from the completion of the Design Phase, as per the provisions of the Agreement.
3. We [●], through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Strategic Partner's obligations during the Term, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Strategic Partner, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer duly authorized by the Project Director of the Authority, that the Strategic Partner has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Strategic Partner is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Strategic Partner is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Strategic Partner, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Strategic Partner for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Strategic Partner and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Strategic Partner before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Strategic Partner contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Strategic Partner, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be

released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Strategic Partner or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Strategic Partner under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in Paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect till the subsistence of the Agreement and provided the Strategic Partner is not in breach of this Agreement. On successful completion of the Design Phase and upon request made by the Strategic Partner for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Strategic Partner, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for 60 days from the Completion of the Design Phase or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this .... Day of ..... 2019

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK

By:

Signature:

Name:

Designation:

Address:



## PART B- PERFORMANCE GUARANTEE FOR OPERATIONS PHASE I

[On Appropriate Stamp Paper]

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

### IN FAVOUR OF:

**RAJIV GANDHI CENTRE FOR AQUACULTURE**, represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

### WHEREAS:

- (A) We understand that [●], (the “**Strategic Partner**”) has entered into an Agreement dated [●] (the “**Agreement**”), with the Authority whereby the Strategic Partner has undertaken to provide the Services, subject to and in accordance with provisions of the Agreement.
2. The Agreement requires the Strategic Partner to furnish a Performance Guarantee to the Authority in a sum of INR [●]/USD [●] (Rupees [●]/United States Dollars [●]) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operations Phase I (as defined in the Agreement) as per the provisions of the Agreement.
3. We [●], through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of this Performance Guarantee

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Strategic Partner’s obligations during the Operations Phase I Performance Guarantee Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Strategic Partner, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer duly authorized by the Project Director of the Authority that the Strategic Partner has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Strategic Partner is in default in due and faithful performance of its obligations during the Performance Guarantee Period under the Agreement and its decision that the Strategic Partner is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Strategic Partner, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Strategic Partner for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Strategic Partner and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Strategic Partner before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Strategic Partner contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Strategic Partner, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Strategic Partner or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Strategic Partner under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Guarantee shall cease to be in force and effect upon the completion of Operations Phase I or submission of the Operations Phase II Performance Guarantee, whichever is earlier.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force during the Operations Phase I Performance Guarantee Period pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ....., 2019. at .....

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## PART C- PERFORMANCE GUARANTEE FOR OPERATIONS PHASE II

[On Appropriate Stamp Paper]

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

### IN FAVOUR OF:

**RAJIV GANDHI CENTRE FOR AQUACULTURE**, represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

### WHEREAS:

- (A) We understand that [●], (the “**Strategic Partner**”) has entered into an Agreement dated [●] (the “**Agreement**”), with the Authority whereby the Strategic Partner has undertaken to provide the Services, subject to and in accordance with provisions of the Agreement.
2. The Agreement requires the Strategic Partner to furnish a Performance Guarantee to the Authority in a sum of Rs. [●]/ USD [●] (Rupees [●]/United States Dollars [●]) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operations Phase II (as defined in the Agreement) as per the provisions of the Agreement.
3. We [●], through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of this Performance Guarantee

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Strategic Partner’s obligations during Operations Phase II Performance Guarantee Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Strategic Partner, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer duly authorized by the Project Director of the Authority that the Strategic Partner has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Strategic Partner is in default in due and faithful performance of its obligations during the Performance Guarantee Period under the Agreement and its decision that the Strategic Partner is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Strategic Partner, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Strategic Partner for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Strategic Partner and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Strategic Partner before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Strategic Partner contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Strategic Partner, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Strategic Partner or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Strategic Partner under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Operations Phase II Performance Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Operations Phase II Performance Guarantee shall cease to be in force and effect within 60 days from the expiry of the Term of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force during the Operations Phase II Performance Guarantee Period pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ....., 2019. at .....

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch



## PART D- SUPPLY PHASE PERFORMANCE SECURITY

[On Appropriate Stamp Paper]

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

### IN FAVOUR OF:

**RAJIV GANDHI CENTRE FOR AQUACULTURE**, represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

### WHEREAS:

- (A) We understand that [●], (the “**Strategic Partner**”) has entered into an Agreement dated [●] (the “**Agreement**”), with the Authority whereby the Strategic Partner has undertaken to provide the Services, subject to and in accordance with provisions of the Agreement.
2. The Agreement requires the Strategic Partner to furnish a Performance Security to the Authority in a sum of Rs. [●]/ USD [●] (Rupees [●]/United States Dollars [●]) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Supply Phase (as defined in the Agreement) as per the provisions of the Agreement.
3. We [●], through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of this Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Strategic Partner’s obligations during Supply Phase, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Strategic Partner, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer duly authorized by the Project Director of the Authority that the Strategic Partner has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Strategic Partner is in default in due and faithful performance of its obligations during the Performance Guarantee Period under the Agreement and its decision that the Strategic Partner is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Strategic Partner, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Strategic Partner for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Strategic Partner and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Strategic Partner before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Strategic Partner contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Strategic Partner, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Strategic Partner or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Strategic Partner under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Supply Phase, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect within 6 months from the issuance of this Guarantee.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force for six months from the date of issuance of the Guarantee pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ....., 2019. at .....

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch

**SCHEDULE F: FORMAT OF CERTIFICATES**

**PART A**

**Design Phase Completion Certificate**

1. I/We,..... (Name of the Authority), under and in accordance with the Agreement dated ..... (the **Agreement**), for the Project, hereby certify that the all the Services under Design Phase for the NBC have been submitted and accepted in accordance with the provisions of the Agreement, and we are satisfied that the Design Phase can be said to have been completed.
  
2. It is certified that, in terms of the aforesaid Agreement, all the Services forming part of Design Phase have been completed, and the Design Phase can be declared complete as on this ..... day of ....., 20.....

SIGNED, SEALED AND DELIVERED

(Signature)

(Name)

(Designation)

(Address)

**PART B**

**Milestone Completion Certificate**

1. We,..... (the Authority), under and in accordance with the Agreement dated ..... (the **Agreement**), for the Project, hereby certify that the Milestone Number [\*\*] of the Design Phase has been completed successfully in accordance with the provisions of the Agreement.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Authority by:

(Signature)

(Name)

(Designation)

(Address)

**PART D**

**Vesting Certificate**

1. **Rajiv Gandhi Centre for Aquaculture** (the Authority) refers to the Agreement dated [●] entered into between the Authority and [●] (the Strategic Partner) for the Project.
2. The Authority hereby acknowledges compliance and fulfilment by the Strategic Partner of the Transfer Requirements set forth in Clause 26.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Strategic Partner in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Strategic Partner to rectify and remedy any defect or deficiency in any of the Transfer Requirements and/or relieving the Strategic Partner in any manner of the same.

Signed on this [●] day of [●], 20[●] at [●].

**AGREED, ACCEPTED AND SIGNED**

**For and on behalf of**

**STRATEGIC**

**PARTNER by:**

**(Signature)**

**(Name)**

**(Designation)**

**(Address)**

**SIGNED, SEALED AND**

**For and on behalf of**

**AUTHORITY by:**

**(Signature)**

**(Name)**

**(Designation)**

**(Address)**

**In the presence of:**

**1.**

**2.**

## **SCHEDULE G: TERMS OF REFERENCE FOR INDEPENDENT COMMITTEE**

### **1. Scope**

- 1.1 These Terms of Reference for the Independent Committee (the **TOR**) are being specified pursuant to the Agreement dated..... (the **Agreement**), which has been entered into between the Authority and ..... (the **Strategic Partner**) for the Project and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

### **2 Definitions and interpretation**

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

### **3 Role and functions of the Independent Committee**

- 3.1 The role and functions of the Independent Committee shall include the following:
- (i) Certify and ascertain as to whether the Designated Number of Families supplied as part of the Evaluation Stream adhere to and conform to the Performance Parameters which are set out in Schedule I;
  - (ii) Certify and ascertain during the Supply Phase that the SP-NBC has supplied 120,000 (one hundred and twenty thousand) **SPF-SPT** PL of *L. vannamei* shrimps to the BMC as part of the Germplasm Stream for the year in accordance with the terms of the Agreement;
  - (iii) Certify and ascertain during the Operations Phase, that the NBC has supplied 120,000 (one hundred and twenty thousand) **SPF-SPT** PL of *L. vannamei* shrimps to the BMC and the other Broodstock Multiplication Centres as part of the Germplasm Stream for the year in accordance with the terms of the Agreement;
  - (iv) Ascertain and verify to and along with the Authority that two years prior to the completion of the Term, the Strategic Partner has been able to supply and develop at least 30 (thirty) distinct least inbreeding families of *L. vannamei* shrimps and has transferred the Pedigree Data for such families with the origin of such families being from diverse geographical areas so as to exploit maximum genetic



- variation;
- (v) Confirm that the Strategic Partner has adequately and completely transferred the microsatellite markers in accordance with the timelines and requirements set out in Schedule A of the Agreement;
  - (vi) Ensure and confirm that the Strategic Partner has developed and transferred the SNP markers to identify QTLs of desirable traits in accordance with the timelines and requirements set out in Schedule A;
  - (vii) Participate and provide inputs in the Half Yearly Meetings with the Strategic Partner and the Authority to decide upon any Deficiency in the Services being provided by the Strategic Partner; and
  - (viii) Perform such other activities and tasks which are incidental or ancillary to the activities and tasks stated in this Paragraph 3, upon the instructions of the Authority.

3.2 The Independent Committee shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4 Specific Obligations during Operations Phase**

4.1 The Independent Committee shall ascertain and verify that the Designated Number of Families supplied as part of the Evaluation Stream conform to the Performance Parameters during the Supply Phase, as stipulated in Schedule H and that whether such non-performance ought to lead to the levy of Damages on the Strategic Partner.

4.2 The Independent Committee shall independently ascertain that field trial and growout exercises conducted by the Strategic Partner are taking place in accordance with Good Industry Practice;

4.3 The Independent Committee shall ensure that the Strategic Partner shall transfer and supply the microsatellite markers in accordance with the timelines and requirements set out in Schedule A of the Agreement as well as ensure and confirm that the Strategic Partner has developed and transferred the SNP markers to identify QTLs of desirable traits in accordance with the timelines and requirements set out in Schedule A;

4.4 The Independent Committee shall verify and ascertain that during the Operations Phase, the NBC is supplying at least 120,000 **SPF-SPT** PL of *L. vannamei* such that 60,000 (sixty thousand) broodstock may be produced by the BMC;

4.5 The Independent Committee may be required to ascertain and verify, at the request of the Authority, to oversee and resolve any disputes regarding outputs derived from the selective breeding activities and the field trials that shall take place during the Operations Phase.

- 4.6 The Independent Committee shall also be required to verify 2 (two) years prior to the expiry of the Term, that the Strategic Partner have supplied and developed at least 30 (thirty) distinct least inbreeding shrimp families along with the transfer of all the Pedigree Data for such 30 (thirty) distinct shrimp families.
- 4.7 The Independent Committee may be required to perform such other activities upon the instruction of the Authority which are incidental or related to the activities stated in this Paragraph 4.

## **5 Assistance in Dispute resolution**

- 5.1 When called upon by the Parties in the event of any dispute with respect to any of the obligations, including but not limited to the fulfilment of the supply obligations set out in Article 15 of the Agreement by the Strategic Partner, the Independent Committee shall mediate and assist the Parties in arriving at an amicable settlement.
- 5.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Committee shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **6 Other duties and functions**

The Independent Committee shall perform all other duties and functions specified in the Agreement.

## **7. Miscellaneous**

- 7.1 A copy of all communications, comments, instructions sent by the Independent Committee to the Strategic Partner pursuant to this TOR, shall be furnished by the Independent Committee to the Authority forthwith.
- 7.2 The Independent Committee shall obtain, and the Strategic Partner shall furnish in two copies thereof, all communications required to be submitted, under this Agreement, by the Strategic Partner to the Independent Committee, whereupon the Independent Committee shall send one of the copies to the Authority along with its comments thereon.

**SCHEDULE H: PERFORMANCE PARAMETERS FOR EVALUATION STREAM**

*(Refer to Article 15)*

The following shall be the Performance Parameters, all of which are required to be exhibited and fulfilled by the shrimp families supplied by the Strategic Partner as part of the Evaluation Stream failing which the same shall be treated as non-performance default.

<b>Performance Parameter</b>	<b>Requirement**</b>
Breeding Performance- the female of the family must produce [*] nauplii	A minimum of [*] % of the families in the Evaluation Stream shall adhere to this parameter
Specific Pathogen Free- Disease Free (must be free of OIE listed diseases) and non-listed important diseases/pathogens as agreed upon mutually between the Strategic Partner and the Authority	100 % of the families in the Evaluation Stream
Specific Disease Tolerant (SPT)	One or more OIE-listed disease/s or pathogen/s, as specified herein below:  [*]  Bidder shall also state and provide the degree of tolerance, preferably in % terms, to the abovementioned diseases.
A survival rate of at least 70%	A minimum of [*] % of the families in the Evaluation Stream shall adhere to this parameter
Growth- exhibits growth of [*] in 4 month	A minimum of [*] % of the families in the Evaluation Stream shall adhere to this parameter

\*\*Note: The blank spaces marked as [\*] in this table shall be filled and completed as per the declaration and submission made by the Strategic Partner in its Concept Presentation during the submission of its Technical Bid. The table and this Schedule I shall be accordingly completed and updated at the time of execution of this Agreement.