

**CENTRAL WAREHOUSING CORPORATION**

(A Govt. of India Undertaking)

**Regional Office Lucknow**

No: CWC/RO-LUCKNOW/BUSSI/SAMO/ICD-KNP/22-23/211

Dated: 20.07.2022

**E-TENDER NOTICE****APPOINTMENT OF  
STRATEGIC ALLIANCE MANAGEMENT OPERATOR****(SAMO)  
AT****INLAND CONTAINER DEPOT (ICD) KANPUR,  
UTTAR PRADESH -208007**

Date for downloading Tender Form	20.07.2022 to 18.08.2022
Last Date for online Submission of tender	Upto 15:00 Hrs. on 19.08.2022
Date of opening (technical bid)	At 15:30 Hrs. on 19.08.2022

**Regional Office** : **Lucknow**  
**Phone Nos.** : **0522-2720685**  
**Email** : **rmlko@cewacor.nic.in**  
**Website** : **www.cewacor.nic.in**



## CENTRAL WAREHOUSING CORPORATION

(A Govt. of India Undertaking)

Regional Office, Lucknow



REGIONAL OFFICE,  
'WAREHOUSING BHAWAN',  
NEAR ROADWAYS WORKSHOP,  
VIBHUTI KHAND, GOMTI NAGAR,

Website : [www.cewacor.nic.in](http://www.cewacor.nic.in), email: [rmlko@cewacor.nic.in](mailto:rmlko@cewacor.nic.in),

Phone: 0522-2720685, Fax-0522-2720686

No: CWC/RO-LUCKNOW/BUSSI/SAMO/ICD-KNP/22-23/211

Dated: 20.07.2022

### **E-Tender Notice**

## **APPOINTMENT OF STRATEGIC ALLIANCE MANAGEMENT OPERATOR (SAMO) AT INLAND CONTAINER DEPOT (ICD) KANPUR, UTTAR PRADESH - 208007**

**CENTRAL WAREHOUSING CORPORATION**  
(A GOVT. OF INDIA UNDERTAKING)  
CORPORATE OFFICE-NEW DELHI

**REGIONAL OFFICE-LUCKNOW,**  
WAREHOUSING BHAWAN, VIBHUTI KHAND  
GOMTI NAGAR, LUCKNOW-226010

*CWC invites e- tender only from the interested professionally competent, experienced and financially sound parties to act as a Strategic Alliance Management Operator (SAMO) for*

*providing Management, Handling and Operation Services at CWC ICD Kanpur Add-at Ahirwa, ICD Road, Kanpur Uttar Pradesh-208007 subject to the prospective contract to be executed between the parties.*

<i>Scope of Work</i>	<i>Providing Management, Handling and Operation Services at CWC ICD Kanpur Add-at Ahirwa, ICD Road, Kanpur Uttar Pradesh-208007.</i>	
<i>Tender Notice</i>	<i>Only Online Tenders (e-tendering) for above work. Tender documents will be available on websites. <a href="http://www.cwceprocure.com">www.cwceprocure.com</a>, <a href="http://www.cewacor.nic.in">www.cewacor.nic.in</a> and <a href="http://www.eprocure.gov.in">www.eprocure.gov.in</a></i>	
<i>Tender Type</i>	<i>Open tender</i>	
<i>Schedule of e-Tender</i>	<i>The bidder has to register (if not registered earlier) with CWC</i>  <i>The detailed procedure for registration is as under:</i>  i) <i>Go to the url:- <a href="http://www.cwceprocure.com">www.cwceprocure.com</a></i>  ii) <i>Click on the REGISTER ME link.</i>  iii) <i>In the Vendor Registration form, vendor has to fill up the applicant details, digital signature information, correct e-mail address and submit form.</i>  iv) <i>The user-id and password are generated in the form of Acknowledgement.</i>	<i>Anytime</i>
	<i>Date and Time for downloading of Tender Documents (free of cost basis)</i>	<i>From 10:00 hrs on 20.07.2022 up to 15:00 hrs on 18.08.2022.</i>
	<i>Enquiries/Clarification by the bidder, if any</i>	<i>From 10:00 hrs on 20.07.2022 up to 14:00 hrs on 31.07.2022.</i>
	<i>Pre-bid meeting</i>  <i>Note: The objective of pre-bid meet is to clarify doubts and queries in respect of terms and conditions of tender document.</i>	<i>04.08.2022 at 14:00 hrs at CWC, Regional Office, Lucknow</i>
	<i>Clarifications to be published by CWC on its website <a href="http://www.cewacor.nic.in">www.cewacor.nic.in</a>, <a href="http://www.eprocure.gov.in">www.eprocure.gov.in</a> and <a href="http://www.cwceprocure.com">www.cwceprocure.com</a></i>	<i>Will be intimated/published</i>
	<i>Last date and time of online bid submission</i>	<i>Upto 15.00 hrs on 19.08.2022.</i>
	<i>Date &amp; time of online Technical Bid opening</i>	<i>At 15:30 hrs on 19.08.2022.</i>

	<i>Evaluation of Technical Bids and seeking any confirmation/clarification regarding Technical bid</i>	<i>Will be intimated later On.</i>
	<i>Intimation to Technically Qualified bidders</i>	<i>Will be intimated later On.</i>
	<i>Date &amp; time of online Financial Bid opening</i>	<i>Will be intimated later On.</i>
	<i>NOTE: If the date fixed for opening of Technical Bid/Financial Bid is declared as holiday, the proposal will be opened on the next working day following the holiday at the same time.</i>	
<i>Bid Validity Period</i>	<i>Four (04) months from the last date for submission of tender. However, CWC may solicit the Bidder's consent for further extension of the period of validity of the bid.</i>	
<i>Period of the Contract</i>	<i>Period of prospective contract agreement shall be 05 (Five) years. The contract period will start from the date of "commencement of the work".</i>	
<i>Processing Fee</i>	<p><i>At the time of submission of bid, the following fee shall be payable:</i></p> <ul style="list-style-type: none"> <li><i>i. Non-refundable processing fee payable to CWC for an amount of Rs. 35,400/- (Rupees Thirty-Five Thousand Four Hundred only) including GST @ 18%. The payment should be deposited through e-payment gateway of M/s ITI only.</i></li> <li><i>ii. Non-refundable Processing fee payable to M/s ITI for an amount of Rs.885/- (Rupees Eight Hundred and Eighty-Five only) including GST @ 18% (Rs 750+135= Rs.885/-). The payment should be deposited through e-payment gateway of M/s ITI only.</i></li> </ul> <p><i>Payment(s) shall be subject to realization/confirmation on the e-tender portal by way of a unique transaction reference number.</i></p>	
<i>Earnest Money Deposit (EMD)</i>	<i>The EMD for an amount of Rs. 1,37,005/- (Rupees One Lac Thirty Seven Thousand Five Only) shall be paid in Indian Rupees only to CWC by the bidder through e-payment gateway of M/s ITI Only. For further details, refer Article 6 of Request for Proposal. Refer Exhibit-11 for exemption to MSE in respect of deposit of EMD.</i>	

*Note:*

**INFORMATION FOR ONLINE PARTICIPATION: -**

- A. *All the bidders are requested to get themselves registered well in advance and no extra time will be consider for the delay in online vendor registration for any reason whatsoever. In case, bidders wait till the last moment for uploading tenders/bid, and if any technical problem is encountered at that time, the bid submission time may elapse. In any event, for any reason whatsoever, in case the bid is not submitted within the bid submission time, CWC shall not be responsible, in any manner whatsoever, for such failure and such unsuccessful attempts shall be treated as non-participation in the tender without permissibility to contest the same or to seek a refund of processing fee, if deposited.*

- B. *If any bidder wishes to participate in CWC tender, bidder has to register their firm through our website [www.cwceprocure.com](http://www.cwceprocure.com) for online e-tendering in consultation with our service provider M/s ITI.*
- C. *The bidder shall require class III digital signature/digital security certificate for participating in CWC e-tendering process (including, for log in, downloading and uploading of bid documents or for submitting the e-bid documents). Digital signature can be obtained from any of the authorize agency of CCA (Controller of Certifying authorities) for which, a separate processing fee would be payable to the authorized agency of CCA, directly. However, if valid class III digital signature is already available with the bidder, the same can be used for CWC tender.*
- D. *The person authorized to participate in the bidding on behalf of the bidder i.e., authorized signatory, can submit the bid under digital signature none other than the one issued to him. Any non-compliance with this stipulation will lead to summarily rejection of the bid.*
- E. *Submission of Tender: -tenderer shall submit their offer in electronic format on the website [www.cwceprocure.com](http://www.cwceprocure.com), on or before the scheduled date and time as mentioned above. No bid in physical form will be accepted and any such offer, if received by CWC will be out rightly rejected.*
- F. *The tender document shall comprise the following:*
- Volume I: Request for Proposal (RFP)*
- Volume II: Draft Contract Agreement, Scope of Work, Compensation Schedule along with respective Exhibit(s) and Appendix(s).*

*For any clarification regarding online participation, contact:*

*Any clarification regarding online participation, the bidder can contact: M/S ITI Limited, 11th Floor, Core-1, Laxmi Nagar District Centre, Laxmi Nagar Delhi-92.*

*For local assistance, may call following help line numbers at M/S ITI Limited, New Delhi at 011-49424365 and Shri. Satish Tiwari. Mobile No. 08800591742*

**Regional Manager**  
Central Warehousing Corporation  
Regional Office,  
Warehousing Bhawan,  
Gomti Nagar, Lucknow-226010

Fax No. : 0522-2720686

Phone: 0522-2720685

+91-8116750900

+91-7219001242

Email: [rmlko@cewacor.nic.in](mailto:rmlko@cewacor.nic.in)

Website: [www.cewacor.nic.in](http://www.cewacor.nic.in)

**DISCLAIMER**

Though adequate care has been taken in the preparation of this Request for Proposal document, CWC makes no representation or warranty as to the accuracy and completeness of the information and/or projections contained in this document or provided to any party by CWC or any other person. CWC shall have no liability for any statements, opinions, information and matters (expressed or implied) arising out of, contained in or derived from, or for any omission from this document or any other written or oral communications transmitted to or conceived/inferred by the party in relation to the assets and business of the ICD, as the case may be.

The Bidder should satisfy themselves that the Document is complete in all respects. Intimation of discrepancy, if any, should be given to the below mentioned office immediately. If no intimation is received by this office on or before 31.07.2022 up to 14:00 Hrs, it shall be deemed that the Bidder is satisfied that the Request for Proposal Document is complete in all respects and Bidder(s) have no queries or confusion related to any part or whole of the Tender Document.

CWC and the Strategic Alliance Management Operator (SAMO) shall have to comply with all provisions of law including the provisions of Customs Act, 1962 and the “Handling of Cargo in Customs Areas Regulations, 2009” and such further regulations issued by the Customs in its letter and spirit. As per Regulation 6 (2) of the “Handling of Cargo in Customs Areas Regulations, 2009” as amended from time to time, the Corporation is required to seek permission from the Customs for the purpose of appointment of SAMO. Any delay in getting the required permission from the Customs, shall not entitle the SAMO to claim any compensation/damages against the Corporation.

Central Warehousing Corporation reserves the right to reject any or all of the proposals submitted in response to this Request for Proposal or otherwise not to proceed with the bidding at any time without assigning any reasons whatsoever, at any stage of evaluation of bids and/or prior to award of the Contract/Agreement.

Central Warehousing Corporation also reserves the right to change any or all of the provisions of this Request for Proposal. Such changes would be intimated to all parties procuring this Request for Proposal and shall be posted on CWC’s website <http://www.cewacor.nic.in>; on the CPP Portal [eprocure.gov.in](http://eprocure.gov.in); and on the CWC’s tender portal [www.cwceprocure.com](http://www.cwceprocure.com) for the benefit of such tenderers who have downloaded the Tender from the website. It is informed that it is the sole responsibility of such bidders to check the website for such changes, if any, on the website with reference to this tender before submitting the Tender. If they fail to do so the CWC shall in no way be liable for the same. However, changes/ clarifications, if any, shall be posted on the website latest by two days prior to close of downloading of the Tender.

## REQUEST FOR PROPOSAL

**Details of Tender:** Strategic Alliance Management Operator (SAMO) for Management, Handling and Operation Services at ICD KANPUR, Uttar Pradesh-208007 as set out in the e-Tender Notice No. *CWC/RO-LUCKNOW/BUSS/SAMO/ICD-KNP/22-23/211;Date: 20.07.2022.*

### 1.1 INTRODUCTION

This bid document has been prepared by CWC and the information contained in this document has been developed from publicly available sources. Bid document includes Request for Proposal along with Exhibits 1 to 16. Exhibit -17 along with its Exhibits/Annexures is for proposed agreement which is integral part of the bid document. This document has been prepared to enable the bidders to participate in the tender process and subsequently execute a Strategic Alliance Management Operator (SAMO) for Management, Handling and Operation Services at ICD-Kanpur with CWC for a period of fifteen (05) years.

This document is solely for use by the bidder(s) who are interested in participating in the bidding process. The document has been prepared to inform bidders and to encourage them to make their own evaluation of the assets and facilities of the ICD. It does not mean to contain all the information that a prospective bidder may require. In all cases, bidders should conduct their own investigation and analysis of the assets, facilities and relevant data set out in this document.

### 1.2 ABBREVIATIONS:

- (i) ICD: Container Freight Station.
- (ii) MGT: Minimum Guaranteed Throughput
- (iii) SQM/sqm/sq meter: Square meter
- (iv) TEU: Twenty Foot Equivalent Unit means a standard unit based on an ISO container of 20 feet length.
- (v) FEU: Forty Foot Equivalent Unit means a standard unit based on an ISO container of 40 feet length. One standard 40' ISO container equals 2 TEUs.

### 1.3 DEFINITIONS:

- (i) Bidder: Bidder shall mean and include a sole-proprietorship firm/concern, Registered Partnership firm, a Company incorporated under the Companies Act, 2013 or Bidding Consortium that has submitted a Bid/Proposal in response to this Request for Proposal document.
- (ii) Bidding Consortium/Joint Venture: If the Bid/Proposal under this tender is made jointly by more than one entity, then the group of entities shall be referred to as a Bidding Consortium. Joint Venture would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards. Irrespective of divisibility of work amongst Bidding Consortium/ Joint Ventures, the members of

- Consortium of Joint Ventures shall be jointly and severally liable and responsible for fulfilling all the obligations under the contract.
- (iii) Lead Member: The member of the Bidding Consortium declared by Member Entities as the Lead Member.
  - (iv) Member Entity: Each entity in the Bidding Consortium shall be referred to as a Member Entity. A registered partnership firm can also be allowed as a Member Entity of the Bidding Consortium provided a Lead Member of the Bidding Consortium shall be a corporate entity.
  - (v) Container: Container shall mean any container used in International trade for export/import cargo, which could be 20', 30', 35', 40' and 45' container viz. Flat rake, Open top, Over-dimension cargo container (high dome or such other size) or the like and may include, Reefer Container(s) also. However, any container above 20' will be treated as 40' container only irrespective of its size being 30', 35', 40', 45' etc. and charged for two containers and considered as a FEU (2 TEUs).
  - (vi) CWC: The term 'CWC' or 'CENTRAL WAREHOUSINGCORP' wherever occurs, shall mean the CENTRAL WAREHOUSING CORPORATION established under the WAREHOUSING CORPORATIONS ACT, 1962 and shall include its administrators, successors and assigns.
  - (vii) Managing Director: 'Managing Director' shall mean the Managing Director of Central Warehousing Corporation (CWC).
  - (viii) Regional Manager: 'Regional Manager' shall mean the Regional Manager, Central Warehousing Corporation (CWC) having administrative control over the facility.
  - (ix) Strategic Alliance Management Operator: The selected Bidder with whom CWC will finalize the Contract/Agreement pursuant to this tender shall be the Strategic Alliance Management Operator (SAMO). The term 'Operator' wherever occurs, shall mean the Strategic Alliance Management Operator.
  - (x) Bid/ Proposal: The Bid/ Proposal submitted by the prospective bidder in response to this Request for proposal issued by CWC.
  - (xi) Request for Proposal: This document, being issued to the prospective Bidder, asking for the proposal.

#### **1.4 CONFIDENTIALITY:**

This document is confidential to the person ("party") who has downloaded a copy of this document. So too, all information provided to the party by CWC, shall be treated as confidential by the party. In accepting delivery of this document, the recipient party acknowledges and agrees to observe and cause all its employees, agents and representatives to observe and be responsible for each of them to observe such confidentiality at all times and undertakes not to use or disclose any such information other than for the sole purpose of enabling the Party to evaluate the undertaking and to make an offer for the development, maintenance and operation of subject assets.



### 1.5 STATUS OF THE DOCUMENTS:

The tender documents are not an offer by CWC to sell or part away with its assets and facilities, neither in part nor in full, in the ICD but is only an offer to allow an entity to provide Management, Handling and Operation Services at ICD-Kanpur .

### 1.6 SITE VISIT:

The bidders are advised to visit the respective site before submitting the tender, satisfy with the terms and conditions listed in this document, information in respect of ICD-Kanpur, study documents and demonstrate a thorough understanding of the site condition, operation, costs and returns. The facility/infrastructure is being offered on “as is where is” basis. No dispute, as regards the information in respect of ICD-Kanpur shall be entertained after submission of bid.

### 2.0 ENQUIRIES & CLARIFICATIONS:

All enquiries/ clarifications are to be addressed **only** to:

**Regional Manager**

Central Warehousing Corporation  
Regional Office,  
Warehousing Bhawan, Vibhuti Khand,  
Gomti Nagar, Lucknow-226010  
Fax No. : 0522-2720686  
Phone: 0522-2720685  
+91-8116750900  
+91-7219001242

Email: [rmlko@cewacor.nic.in](mailto:rmlko@cewacor.nic.in)

Website: [www.cewacor.nic.in](http://www.cewacor.nic.in)

All queries that are received from bidder(s) shall be addressed by CWC during pre-bid meeting. CWC shall aggregate all clarifications and shall prepare a response, which shall subsequently be posted on the website [www.cewacor.nic.in](http://www.cewacor.nic.in), [www.eprocure.gov.in](http://www.eprocure.gov.in) and [www.cwceprocure.com](http://www.cwceprocure.com). No separate communication shall be issued.

### 3.0 ADDITIONAL INFORMATION TO BIDDER

All Bidders should note the following:

- 1) The proposals that are incomplete in any respect or those which are not consistent with the requirements as specified in this Request for Proposal or which do not contain the Covering Letter, Letters of Commitment from each of the Member Entities in case of a Bidding Consortium as per the specified formats would be considered non-responsive and would be summarily rejected.

- 2) Adherence to formats, wherever specified, is must. Non-adherence to formats may be a ground for declaring the proposal non-responsive.
- 3) All communications and information should be provided in writing and in English language only.
- 4) All communications and information should be addressed only to the Regional Manager, CWC designated under Article 2, above.
- 5) All the communications and information provided should be legible.
- 6) No change in, or supplementary information to a proposal after its submission shall be accepted. However, CWC reserves the right to seek additional clarification from the Bidders, if necessary, during the course of evaluation of the Proposal. As per Clause 3 or 8 of this RFP, non-submission, incomplete submission or delayed submission of such additional information or clarifications sought by CWC will be a ground for rejecting the proposal.
- 7) If any statement made or information provided by the Bidder in the proposal or any information provided by the Bidder in response to any subsequent query of CWC, is found to be incorrect or is a material misrepresentation of facts, then the proposal will be liable for rejection. Mere clerical errors or bonafide mistakes may be condoned by CWC before evaluation of financial bid at the sole discretion of CWC.
- 8) The Bidder shall be responsible for all costs associated with the preparation of the Proposal. CWC shall not be liable to and subjected to any financial implication whatsoever, including, for any costs, regardless of the conduct or outcome of this tender process.
- 9) Any qualified/conditional bid shall be liable for outright rejection by CWC without assigning any reason whatsoever.

#### **4.0 OPENING OF PROPOSALS**

The Technical Bid of the bidder would be opened on the date and time specified at the CWC, Regional Office, Warehousing Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010, in the presence of one representative from each Bidder, if deputed. The details regarding the bidder, as provided in the Covering Letter (**Exhibit -1**) would be read out.

#### **5.0 VALIDITY OF TERMS OF THE PROPOSAL:**

Each Proposal shall be deemed to be a firm and irrevocable offer, and shall remain valid and open for a period of not less than four (04) months from the last date for submission of the bid/ proposal as laid down in this RFP document. However, CWC may solicit the Bidder's consent for extension of the period of validity and the Bidder agrees to consider such a request. The request and response shall be in writing. A Bidder accepting CWC's request for extension of validity shall not be permitted to modify their original offer/proposal in any other respect.

**6.0 PROCESSING FEE AND EARNEST MONEY DEPOSIT (EMD)**

6.1 At the time of submission of bid, the following fee shall be payable:

- i. Non-refundable processing fee payable to CWC for an amount of Rs. 35,400/- (Rupees Thirty-Five Thousand Four Hundred only) including GST @ 18%. The payment should be deposited through e-payment gateway of M/s ITI only.
- ii. Non-refundable Processing fee payable to M/s ITI for an amount of Rs.885/- (Rupees Eight Hundred and Eighty-Five only) including GST @ 18% (Rs 750+135= Rs.885/-). The payment should be deposited through e-payment gateway of M/s ITI only.
- iii. The EMD for an amount of Rs. 1,37,005/- (Rupees One Lac Thirty Seven Thousand Five Only) shall be paid in Indian Rupees only to CWC by the bidder through e-payment gateway of M/s ITI Only.

6.2 No proposal shall be considered which is not accompanied by the required Process Fee(s) and EMD. Payments shall be subject to realization/confirmation on the e-tender portal by way of a unique transaction reference number.

6.3 In the event of bidder withdrawing its offer before the expiry of the validity period and/or not accepting the award of Contract/Agreement after acceptance of bid/proposal by CWC, EMD shall stand forfeited by CWC. In addition to this, CWC may suspend/ ban the trade relations with the said bidder or debar the bidder to participate in all future tender enquiries with CWC up-to a period of five (05) years, without prejudice to any other rights and remedies available with CWC under the agreement and law. The decision of Managing Director, as regards forfeiture of EMD on bidder's non-acceptance of Contract/Agreement, shall be final and binding upon the bidder and shall be an excepted matter.

6.4 EMD of the unsuccessful bidder shall be returned after finalization of the offer. No interest shall be payable on the amount of Earnest Money in any case. The EMD of the successful bidder shall be either refunded; or adjusted from the payments to be received by CWC under the Contract/Agreement with the bidder. Notwithstanding the above, in any event, no such refund or adjustment shall be given unless and until the bidder executes the Contract/ Agreement with CWC and furnish the required irrevocable bank guarantee in terms of the Contract/Agreement.

6.5 The bidder participating under the category MSEs registered with the prescribed agencies are exempted from payment of EMD and Processing fee(s) payable to CWC as stipulated in the tender notice subject to furnishing the proof of they being so registered with the relevant statutory agency. The Registration of such bidder under MSE Notification should be valid as on last date of submission of tender and they should also mention the terminal validity of their Registration (if applicable), failing which, their offer shall not be considered for benefits detailed in MSE Notification of Govt. of India dated 23.3.2012 or any other notification as may be issued thereafter. Detailed Terms for Micro & Small Enterprises are mentioned at **EXHIBIT-11**.

## **7. DESCRIPTION OF THE SELECTION PROCESS**

The selection process would consist of the online submission of proposal/bid by the interested parties in response to the Request for Proposal. The proposals received would be subject to a two-step evaluation as below:

**Step 1:** Technical Evaluation based on documents submitted including, **Exhibits 1 to 15** and acceptance of **Exhibit-17**.

**Step 2:** Financial Evaluation based on financial bid submitted under **Exhibit-16**.

## **8. TECHNICAL EVALUATION**

**BIDDER TO NOTE THAT THE FINANCIAL BID SHOULD BE SUBMITTED SEPARATELY AND INDEPENDENT OF THE TECHNICAL BID. IN CASE, FINANCIAL BID FORMS PART OF THE TECHNICAL BID, THE BID SHALL BE SUMMARILY REJECTED BY CWC.**

### **8.1. THE OBJECTIVE OF THE TECHNICAL EVALUATION PROCESS:**

The objective of the technical evaluation process is to select Bidder(s) who have the commercial and operational strength to equip, maintain, handle and operate the Facility as an agent of CWC, to achieve optimum levels of capacity utilization and maximize commercial benefits to CWC.

The proposals shall be evaluated as per the criteria specified in the Request for Proposal. However, within the broad framework of the evaluation parameters as stated in the Request for proposal, CWC reserves the right to make modifications to the stated Evaluation Criteria, which would be uniformly applied to all the Bidders.

### **8.2. ELIGIBILITY CRITERIA FOR CONSIDERATION FOR TECHNICAL EVALUATION:**

Only those Bidders, meeting the eligibility criteria specified below would be considered for technical evaluation:

- a) The bidder should have proven handling experience as Shipping Agent/Shipping Company/Shipping Line/Customs House Agent/Consolidator/NVOCC Operator/3PL Service Provider/ Container Terminal Operator/ ICD Operator/ /Warehousing Service Provider/ Logistics Service Provider with minimum throughput of 1000 Loaded TEUs in any of the last five (05) financial years (2017-18, 2018-19, 2019-20, 2020-21 & 2021-22).

**AND**

- b) The Bidder should have achieved the minimum turnover of Rs. 1,19,87,938/- in any of the last five financial years i.e., 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22. If the audited report of 2021-22 is not available, the audited report of 2016-17 may be taken into consideration (“**Turnover**”).

**AND**

- c) The bidder shall commit minimum guaranteed throughput (MGT) of 3000 TEUs (Loaded Import & Loaded Export containers) per annum at INLAND CONTAINER DEPOT (ICD)-Kanpur.

**AND**

- d) The bidder should have a positive net worth.

### 8.3 PRELIMINARY SCRUTINY OF BIDS AND PRE-QUALIFIED BIDDERS

CWC will scrutinize the bids received to see whether they meet the basic requirements as incorporated in the bid document. CWC will evaluate the information submitted by the bidder in to select the pre-qualified bidders. The bids which do not meet the basic requirements shall be treated as unresponsive and shall be ignored/rejected, summarily. The following are grounds due to which a bid may be declared as unresponsive and/or is to be ignored/rejected during the initial scrutiny:

- (i) The bid is not legible;
- (ii) Required EMD and processing fees has not been received;
- (iii) The bid validity period mentioned by the bidder in the bid document is for a shorter period than the period required and stipulated in the bid document (ref. Clause 5.0 of this RFP)
- (iv) The bidder has not agreed to the any of the conditions including, but not limited to, Contract conditions, Scope of Services and/or Compensation Schedule.

### 8.4 FURTHER EVALUATION

- (a) CWC shall evaluate the technical bids to determine whether they are complete, whether the required documents, as asked for, have been submitted and whether the technical bid is generally in order as per the qualifying conditions of the tender.
- (b) CWC, if necessary, can ask the bidder for any specific clarification relating to qualifying document/ condition or can seek missing document(s) within the specified time of Fifteen Days **(15) days**. For this purpose, the procedure stated below is to be followed and the specific clarification and missing document is required to be uploaded on the same portal as per the procedure prescribed therein.

The Missing document to be submitted should not be of a date later than the date of submission of original bid, however the pre-contract integrity pact as per **Exhibit-10** and Affidavit of proprietary firm as per **Exhibit-13** submitted as missing documents can be of a date after the date of submission of original bid. The missing documents

sought are allowed to be submitted only by uploading on the tender website through which same has been sought.

With respect to qualifying criteria, if any information/document is not submitted or partly submitted or wrong document is submitted or the document submitted does not explain fully the tender requirements, same can be sought by the CWC from the bidder.

- (c) CWC can waive any minor infirmity or non-conformity or irregularity like spelling mistake(s), signature missing on any page which does not constitute a material deviation.
- (d) The bidder has the option either to respond or not to respond to these queries.
- (e) The request for clarification and missing document(s) by the CWC and the response of the bidder shall be in writing and no change in price or substance of the tender shall be sought, offered or permitted.
- (f) If the bidder fails to respond, within the stipulated time period or the clarification(s)/document(s) submitted is non-conforming to requirement of tender conditions, no further time will be given for submitting the same and the tender will be summarily rejected.
- (g) All the responses to the clarifications will be part of the Proposal of the respective bidder and if the clarifications are in variance with the earlier information in the proposal, the information provided in later stages will be the part of the agreement.

Procedure to be followed for obtaining missing documents & specific clarification:

- (i) An Icon for clarification shall appear on “Bid details” page (in front of each of the bidder’s name) at CWC’s end after opening of Technical / Financial Bid.
- (ii) CWC shall click on clarification icon for the desired bidder and enter the details of clarifications / missing documents sought within the prescribed time.
- (iii) After entering the details of clarification / missing document sought by the CWC, same icon shall appear at Bidder’s end for replying to the particular clarification / missing document sought by the CWC. The system will also send the alert to the bidder at his registered e-mail address about the clarification / missing document sought by the CWC.
- (iv) Bidder will click on clarification icon and will reply to the same and upload the required document (optional) in support of clarification sought and also submit missing document, if any, within the prescribed time. Bidder cannot ask for any clarification from the CWC.
- (v) Once the prescribed time expires, clarification icon from bidder site shall also disappear automatically.

- (vi) After expiry of prescribed time, CWC shall download the clarification / missing document submitted by the bidder.

8.5 INFORMATION TO BE FURNISHED BY THE BIDDER FOR PRE-QUALIFICATION:

- (i) Covering Letter as per the format specified in **Exhibit-1**
- (ii) Description of the Bidder as per the format specified in **Exhibit – 2**.
- (iii) MOU amongst the member entities of a Bidding Consortium incorporating the principles as in **Exhibit -3** (if applicable)
- (iv) (a) Consideration for pre-qualification as per the format specified in **Exhibit- 5, Exhibit 6 & Exhibit- 7**. Letter of Commitment as per the formats specified in **Exhibit-4**, from each of the Member entities, the strengths of which are desired to be considered for evaluation in accordance with **Exhibit-6**; and  
  
(b) Audited Annual Accounts for the past five financial years (2017-18, 2018-19, 2019-20, 2020-21 & 2021-22) for all the bidders/entities who are desiring to be considered for evaluation of the Proposal for pre-qualification. If the audited annual accounts of 2021-22 are not available, audited annual accounts for 2016-17 may be submitted.
- (v) Information Requirements for operational capability as per the formats specified in Exhibit-8.
- (vi) a) Registered Partnership deed in case of Partnership Firm; or  
  
b) Incorporation Certificate, Memorandum of Association and Articles of Association in respect of Bidder Company; or  
  
c) Incorporation Certificate, Memorandum of Association and Articles of Association or copy of registered Partnership Deed, etc., as the case may be, of all member entities of Bidding Consortium.
- (vii) Details of customers on whose behalf containers were handled duly certified by the concerned agency to satisfy the eligibility criteria at clause 8.2(a) of RFP. In case the bidder satisfies the eligibility criteria at clause 8.2(a) of RFP from their own facility, a certificate from the statutory auditor certifying handling the required throughput shall be submitted by the bidder.
- (viii) Bidders have to submit Bid document including, NIT and RFP together with proposed agreement at **Exhibit-17** along with its Schedules and Appendix.
- (ix) Bidder shall submit an undertaking for disqualification conditions in respect of any proprietor/ director(s)/owner(s) of the company including firm/ company/ joint venture/ sole proprietary firm/partnership firm or any other entity/ constituent of such entity, bidding in the present tender (**Exhibit-12**).
- (x) Bidder shall submit an undertaking as per **Exhibit-9** to commit Minimum Guaranteed Throughput (MGT) per annum.

- (xi) Bidder shall submit a duly signed Pre-Contract Integrity Pact as per **Exhibit-10**.

#### 8.6 GUIDELINES TO BE FOLLOWED BY BIDDING ENTITIES

The Bidder should designate one person (“Contact person” and “Authorized Signatory”) to represent the Bidder in his dealings with CWC. This designated person should be authorized to perform all tasks including, but not limited to, providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder, etc., whose act/s shall be binding on the bidder.

**A) Submission of bid/proposal by a Sole Proprietor:**

If the Bid is submitted by a sole proprietorship concern, it shall be signed by the proprietor himself above his full name and the name of his concern with its current address. **(Exhibit-13)**

**B) Submission of bid/proposal by a registered partnership firm:**

The bid shall be signed by all partners of the firm, with their full names and current addresses or by a partner holding the Power of Attorney for the firm for signing the Bid/proposal, in which case a certified Power of Attorney shall accompany the Bid/proposal. A certified copy of partnership deed, certificate of its registration with the Registrar of Firms, current address of the firm and the full names and addresses of all partners of the firm shall also accompany the Bid/proposal.

**C) Submission of bid/proposal by a Company:**

If the proposal is submitted by Company, the same should also contain certified copy of **Incorporation Certificate**, Memorandum of Association (MoA) and Article of Association (AoA) of the Company along with a resolution of the Board for participation in the tender. A certified Power of Attorney in favour of the authorized signatory be also furnished.

**D) Submission of proposal by a Consortium/ Joint-Venture:**

- (i) The proposal for pre-qualification bid shall contain a copy of the Memorandum of Understanding (MOU) entered into between the Member Entities of a Consortium/Joint Venture, as per the principles of MOU specified in **Exhibit-3**.
- (ii) In the absence of such a document, the proposal would be considered and evaluated as one from an individual member entity alone, submitting the proposal.
- (iii) Any change in the composition of the consortium or the proposed role of member entities after submission of the bid/proposal would be recognized and permitted by CWC only in terms of the prospective Agreement, if such change is, in the opinion and sole discretion of CWC, not prejudicial to the strengths of the consortium as was evaluated earlier.



- (iv) CWC reserves the right to reject any proposal pursuant to a change in the composition of the bidding consortium, after submission of the bid and prior to award of the Agreement, without giving any reason whatsoever.
- (v) A certified true copy of the Memorandum of Association (MOA) and Article of Association (AOA) in respect of each member entity to be submitted. A Board resolution from each member entity for formation of consortium and authorizing its signatory along with power of attorney shall also be submitted. The pre-contract integrity pact in respect of each member entity of consortium also needs to be signed and submitted.
- (vi) The bid/Proposal submitted by the Consortium should contain signed letters (self-attested) submitted by each of the member/entities, stating that the entire Proposal has been examined, each key element of the proposal is being agreed to and that irrespective of division of scope of work amongst consortium members, each member shall be jointly and severally liable to CWC.
- (vii) No entity can propose to be a member of more than one Bidding Consortium/Joint Venture for submission of the Proposal under this tender.

## 9.0 FINANCIAL BID EVALUATION

### 9.1 SUBMISSION OF FINANCIAL BID:

The Bidder shall submit only one set of the Financial Bid under **Exhibit-16** in electronic format on or before the scheduled date and time as mentioned in the tender notice. No offer in physical form will be accepted and any such offer, if received by CWC will lead to rejection of complete bid.

**BIDDER TO NOTE THAT THE FINANCIAL BID SHOULD BE SUBMITTED SEPARATELY AND INDEPENDENT OF THE TECHNICAL BID. IN CASE, FINANCIAL BID FORMS PART OF THE TECHNICAL BID, THE BID SHALL BE SUMMARILY REJECTED BY CWC.**

### 9.2 EVALUATION OF FINANCIAL BID

Financial Bid in respect of the bidders declared as pre-qualified in evaluation of technical bid will be opened. The Financial Bids will be ranked on the basis of the total quoted amount [FIXED AMOUNT, VARIABLE AMOUNT and REVENUE SHARE (as specified in Clause 8.2 c) read with Exhibit-15). The bidder having quoted the most attractive commercial terms on the **Total Quoted Amount** (as defined herein, below) shall be ranked as H1, and subsequent bidders shall be ranked in order of their respective total quoted amounts shall be ranked as H2, H3, and so on subject to provision of Public Procurement Policies for MSEs as per **Exhibit 11**.

**Total Quoted Amount (H1) = [(Quoted Fixed Amount) + {(Quoted Guaranteed Throughput/Committed Throughput) X (Quoted per TEU Variable Amount)}]**

**NOTE:**

1. In case, the total quoted amount as worked out above is found to be same for more than one bidder, H1 bidder shall be declared on the basis of highest Turnover [Refer Clause 8.2(b)].
2. Any Conditional and/or incomplete financial bid (Exhibit-15) is liable to be rejected.

#### **Example for calculation of Total Quoted Amount**

Let us suppose the following commercials for the sake of example.

- Quoted Fixed Fee: Rs. 32,00,000 per annum
- Quoted Variable Fee per TEU: Rs 850/- per TEU
- Committed Throughput: 3000 TEUs per annum

**Total Quoted Amount = [3200000 + (3000 \* 850) = INR 57,50,000/-**

#### **10. DISQUALIFICATION CONDITIONS:**

The bidder(s) who fall in any of the category below shall not be entitle to participate in this tender process:

- a) The bidder(s) who has/have been blacklisted or otherwise debarred by CWC or any department of Central or State Government or any other Public Sector Undertaking as on the date of publication of NIT;
- b) The bidder(s) who has/have been earlier in contractual relationship with CWC and CWC has terminated the contract with such bidder on account of bidder's default in the past five (05) years;
- c) If the bidder(s) has/have participated in any tender during last five (05) years and the EMD of such bidder stood forfeited by CWC;
- d) If the proprietor / any of the partners of the firm / any of the Director of the bidder has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, such bidder will be ineligible. However, on acquittal by the any competent court having jurisdiction, the bidder will be eligible to participate. The bidder is required to furnish a self-declaration as per Exhibit-12.
- e) Submission of false, dubious, forged or tampered documents by the bidder shall lead to the disqualification of the bidder and action as deemed fit (including forfeiture of EMD/Blacklisting) by CWC shall be taken against such erring bidder.

**Regional Manager**  
**Central Warehousing Corporation**  
**Regional Office,**  
**Warehousing Bhawan, Vibhuti Khand,**  
**Gomti Nagar, Lucknow-226010**  
Fax No. : 0522-2720686  
Phone: 0522-2720685  
+91-8116750900  
+91-7219001242  
Email: [rmlko@cewacor.nic.in](mailto:rmlko@cewacor.nic.in)  
Website: [www.cewacor.nic.in](http://www.cewacor.nic.in)

<b>EXHIBIT-1</b> <b>FORMAT OF THE COVERING LETTER</b>
--

(The covering letter is to be submitted by the Bidder, along with the Proposal for Technical evaluation)

Date:

Place:

**The Regional Manager**  
**Central Warehousing Corporation**

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

Dear Sir,

**Sub: Tender for appointment of SAMO at CWC, ICD-Kanpur reg.**

Please find enclosed one copy of our Bid/Proposal in respect of ICD-Kanpur, in response to the Request for proposal ("RFP") document downloaded by us on \_\_\_\_\_.

We hereby confirm the following:

1. The proposal is being submitted by us in accordance with the conditions stipulated in the RFP. The proposal is a firm and irrevocable offer, and shall remain valid and open for a period of not less than 04 (four) months from the last date of submission of the proposal as laid down in this RFP document.
2. We have examined in detail and have understood the terms and conditions stipulated in the RFP document issued by CWC and in any subsequent communication sent by CWC. We agree and undertake to abide by all these terms and conditions. Our Proposal is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from CWC.
3. Our proposal includes Letters of Commitment, consistent with the format as specified in the Exhibit-4 of RFP, from all the Member Entities. (Required only in case of a Bidding Consortium/Joint Venture)
4. The information submitted in our Proposal is complete, is strictly as per the requirements as stipulated in the RFP, and is true and correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Proposal.
5. The Bidder satisfies the legal requirements and meets all the eligibility criteria laid down in the RFP.
6. We as the Bidder, designate Mr./Ms. \_\_\_\_\_ (mention name, designation, contact address, phone no. fax no. etc.), as our representative who is authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into commitments etc. on behalf of the Bidder in respect of the Project.

7. Copy of proof of payment towards EMD of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only.) through RTGS is enclosed.
8. An amount of Rs. \_\_\_\_\_/- (Rupees ..... only) inclusive of GST has been paid to M/s ITI through e-payment/NEFT and copy of proof of payment towards processing fee is enclosed.

For and on behalf of:

Signature/(s):

Name of the Person/(s):  
(Authorized Signatory/Signatories)

Designation/(s):

**EXHIBIT-2**  
**DESCRIPTION OF THE BIDDER**

A.	Name of the Bidder	
	Sole proprietorship, Registered Partnership Firm, Company or Bidding Consortium/Joint Venture	[Please specify the category]
B.	Composition of the Registered Partnership Firm and Name, Addresses of all Partners	
C.	Name of the Lead Member in the case of Bidding Consortium/Joint Venture	
D.	PAN No. of the Bidder (Consortium/ JV members)	
E.	GST Registration No. of the bidder (Consortium/JV members)	
<b>S. No.</b>	<b>Name of the Member Entity of consortium/joint venture</b>	<b>Role as per the MOU signed by and between all the Member Entities</b>
1		
2		
3		
4		
5		

**EXHIBIT-3**

**PRINCIPLES OF THE MEMORANDUM OF UNDERSTANDING TO BE EXECUTED BETWEEN THE MEMBER ENTITIES OF A BIDDING CONSORTIUM**

The principles based on which the Memorandum of Understanding (MOU) shall be executed between/among the Member Entities of a Bidding Consortium, are stated below:

1. The MOU should clearly specify the roles and responsibilities of each of the Member Entities. It is expected that the individual members have role definitions not conflicting with that of the other members of the consortium. The operational responsibility should be assigned to only one of the Member Entities.
2. The MOU should clearly designate one of the Member Entities as the Lead Member.
3. The Lead Member should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidders, etc. of the Member Entities.
4. The MOU should be duly signed by each of the Member Entities.
5. The MOU should be executed on a stamp paper of appropriate value.
6. The MOU should be specific to the Project.
7. The MOU shall provide that each of the member entities shall be a party to the agreement with CWC and shall, irrespective of division of work, be jointly and severally responsible and liable to fulfil all the obligations to be assumed by the Bidder under the agreement with the CWC at all times during the period of the validity of the agreement.
8. The MOU shall provide that no Member Entities shall withdraw from the agreement with CWC without the prior written approval of CWC, which CWC may refuse if in CWC's opinion such withdrawal will be prejudicial to the interest of CWC.
9. The MOU shall provide that if the Member Entities desire to establish a Special Purpose Vehicle (SPV) to implement the agreement with CWC, the same shall be (a) a company incorporated under the Companies Act, 2013; (b) the company's sole business shall be to undertake the management, operations and handling services for which CWC may select the Bidder and the Special Purpose Vehicle shall not undertake any other activity without the prior approval of CWC; (c) the Lead member shall hold minimum of 40% of the voting shares in the Special Purpose Vehicle and out of the balance at least 20% of the voting shares shall be held by other Member Entities and (d) notwithstanding the Special Purpose Vehicle, responsibilities, obligations and liabilities of member entities to CWC shall continue without any change.

**EXHIBIT-4**  
**FORMAT OF THE LETTER OF COMMITMENT**

(The Letters of Commitment shall be submitted by each of the Member Entities of the Bidding Consortium/Joint Venture whose strengths are to be considered for evaluation)

Date:

Place:

The Regional Manager  
 Central Warehousing Corporation

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

Dear Sir,

1.1.1.1.1 Sub: Tender for appointment of SAMO at CWC ICD-Kanpur .....Reg.

This has reference to the Proposal being submitted by \_\_\_\_\_ (name of the Lead Member), in respect of the \_\_\_\_\_ project, in response to the Request for Proposal (“RFP”) document downloaded by us on \_\_\_\_\_ / issued by the Central Warehousing Corporation on \_\_\_\_\_.

We hereby confirm the following:

1. We \_\_\_\_\_ (name of the Member Entity), have examined in detail and have understood and satisfied ourselves regarding the contents including the following:
  - The “Request for Proposal” document issued by CWC
  - All subsequent communications between CWC and the Bidding Consortium/ Joint Venture represented by \_\_\_\_\_ (name of the Lead Member);
  - The MOU signed between/among \_\_\_\_\_ (name(s) of member entities; and
  - The proposal being submitted by \_\_\_\_\_ (name of the Lead Member).
2. We have satisfied ourselves regarding our role as \_\_\_\_\_ (here give a brief description of the role) in the Project as specified in the Proposal. If \_\_\_\_\_ (name of the Bidding Consortium/Joint Venture) is awarded the Project we shall perform our role as outlined in the Proposal to the best of our abilities.
3. The nature of our legal relationship with the Member Entities of the Bidding Consortium/Joint Venture is specified in the Proposal, as per the requirements stated in the RFP.

4. Irrespective of division of scope of work/ role and responsibilities, we shall be jointly and severally liable and responsible for the due and faithful performance of all obligations under the Agreement with CWC.
5. We therefore request CWC to consider our strengths, our experience, and our track record as specified in the proposal pursuant to the conditions specified in the RFP, for the purposes of evaluation of the Proposal.

For and on behalf of:

Signature

(Authorized Signatory)

Name of the Person:

Designation:



<p style="text-align: center;"><b>EXHIBIT-5</b> <b>CONSIDERATION FOR EVALUATION</b></p>
---

**CONSIDERATION FOR EVALUATION:****FOR BIDDER/ BIDDING COMPANY:**

- For evaluation under the Financial Capability criteria, either the strength of the Bidder shall be considered. The proposal should clearly indicate the entity that should be considered for the evaluation of Financial Capability as per Clause 8.2(b).
- For evaluation under the Operational Capability, the experience and track record of the Bidder as per Clause 8.2(a) shall be considered.
- For evaluation under the Commercial Capability, the ability for captive cargo commitment of the Bidder as per Clause 8.2(c) shall be considered.

**FOR A BIDDING CONSORTIUM/JOINT VENTURE:**

- For evaluation under the Financial Capability criteria, either the strength of the single entity acting as the Lead Member or the strength of any one of its consortium members shall be considered. The Proposal should clearly indicate the corporate entity or firm that should be considered for the evaluation of Financial Capability as per Exhibit-7.
- For evaluation under the Operational Capability (Exhibit-8), the experience & track record of the Lead Member and the experience & track record of the consortium members of the Lead Member shall be considered. The lead partner must have at least 60% of minimum experience and minimum turnover.

**EXHIBIT-6**  
**INFORMATION FOR PRE-QUALIFICATION:**  
**CONSIDERATION FOR EVALUATION**

**A. Bidder to be considered for Financial Capability**

Name of the Bidder/Bidding Company/Lead Member/Consortium Member to be considered for evaluation of Financial Capability.	
Affiliate of the Bidding Company/Lead Member if to be considered for evaluation of Financial Capability.	[Please provide the name of the company that should be considered and the relationship with the Bidding Company/Lead Member]

**B. Bidder to be considered for Operational Capability**

S. No.	Name of the Bidder/Bidding Company/Lead Member Consortium Member	Percentage of Minimum Experience
--------	--	----------------------------------

**EXHIBIT-7 (a)**  
**INFORMATION FOR TECHNICAL EVALUATION:**  
**FINANCIAL CAPABILITY AS PER ELIGIBILITY CRITERIA**

This section specifies information to be provided in respect of the bidder/ bidding company/ member entity as stated by the Bidder in **Exhibit-6** and only such entity would be considered for evaluation of financial capability, as specified in Clause 8.2(b).

The Bidder should attach the Audited Annual Reports for the last five (05) financial years ( 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22) of all the entities which need to be evaluated under Financial Capability in accordance with the information submitted by the Bidder in **Exhibit-6**.

If the audit has not been completed for the year 2021-22 the Audited Annual Report for the year 2016-17 may be submitted.

**The Bidder should attach details as tabulated below duly certified from the Statutory Auditors. In case of Bidding Consortium, certificate should be from the Statutory Auditors of the Lead Member.**

S. No.	Bidder Type	Proposed Equity Shareholding in Consortium (%)	Turnover				
			2021-22	2020-21	2019-20	2018-19	2017-18
1	Single Entity						
2	Consortium/JV Lead Member						
3	Consortium/JV Member						
4	Consortium/JV Member						

**Certificate from Statutory Auditor**

**Name of the audit firm:**

**Seal of the audit firm:**

(Signature, name and designation  
Of the authorized signatory)

**Date:**

**EXHIBIT-7 (b)**  
**INFORMATION FOR TECHNICAL EVALUATION:**  
**FINANCIAL CAPABILITY AS PER ELIGIBILITY CRITERIA**

This section specifies information to be provided in respect of the bidder/ bidding company/ member entity/Affiliate as stated by the Bidder in **Exhibit-6** and only such entity would be considered for evaluation of financial capability, as specified in **clause 8.2(d)**. **The Bidder should attach details as tabulated below duly certified from the Statutory Auditors. In case of Bidding Consortium, certificate should be from the Statutory Auditors of the Lead Member.**

S. No.	Bidder Type	Proposed Equity Shareholding in Consortium (%)	Net Worth
1	Single Entity		
2	Consortium Lead Member		
3	Consortium Member		
4	Consortium Member		
5	Consortium Member		

**Certificate from Statutory Auditor**

**Name of the audit firm:**

**Seal of the audit firm:**

**(Signature, name and designation  
Of the authorized signatory)**

**Date:**

**EXHIBIT-8**  
**INFORMATION FOR TECHNICAL EVALUATION:**  
**OPERATIONAL CAPABILITY**

Bidders should note that:

1. The relevant experience of the Bidder as per the specified roles in **Exhibit-6** will be considered.
2. Information of the Bidder is required to be furnished as per the attached Formats 1 and Format 2.
3. The Bidders are also required to provide supporting documentary evidence(s) from concerned agencies in respect of the information contained in Format 1 and Format 2.

**INFORMATION FOR TECHNICAL EVALUATION**  
**OPERATIONAL CAPABILITY - FORMAT 1**

All Bidders/Promoters/Member Entities (including all identified third party Strategic Alliance Management Operators who are to interface with the Bidder/ Bidding Consortium/Joint Venture as per the envisaged technical proposal) are required to furnish information in the following formats.

	NAME OF BIDDER	
	Description of item	Details
<b>A.</b>	<b>Site Information</b>	
	Name of the facilities	
	Location	
	Serving Pattern	
	Relation to the Bidder	
	Year of Establishment	
	Primary activities/ Services rendered in the Facility	
	Secondary activities/services rendered in the facility	
<b>B.</b>	<b>Civil Information</b>	
1	Total Covered Storage area for cargo.	In Sq. Mtr as on Date:
1.1	General Storage area for cargo (sq. m)	
1.2	Special storage area for hazardous cargo (sq. m)	
1.3	Cold storage area (sq. m)	
	TOTAL( 1.1+1.2+1.3) (sq. m)	
2	Open paved area. (in Sq m) as on Date	

C	Throughput Information (Imports & Exports)	2017-18	2018-19	2019-20	2020-21	2021-22
1	Cargo Throughput General/ Break bulk / containers able cargo (tonnes p.a.)					
2	Container throughput (p.a.)					
2.1	Loaded TEUs per annum					
3	Special container handling:					
3.1	Reefer TEUs per annum					
3.2	Hazardous cargo containers TEUs (per annum)					
3.3	Liquid cargo containers TEUs p.a.					
3.4	Others (please specify) TEUs (per annum )					
4	Container Stuffing/De-stuffing:					
4.1	Stuffed TEUs (per annum)					
4.2	De-stuffed TEUs ( per annum )					
D.	Additional Information	2017-18	2018-19	2019-20	2020-21	2021-22
1	Describe the range, nature and quantum of services offered at the facility in the following:					
1.1	Value added services					
1.2	Container related services					
1.3	Cargo related services					
1.4	Specified cargo services					
2	Details of IT systems at Facility					
2.1	Whether currently supporting EDI function					
2.2	Description of all IT supported operations e.g. inventory tracking					
3	User References detailing					
3.1	Name and contact address of the two largest users of the Facility					
4	Names of key Contractor and scope of facilities/services offered by each					
5	Brief description of security system in place					
6.1	Number of Contract labour					
6.2	Number of permanent labour					
6.3	Number of management cadre employee					

Note: above information should be provided as applicable. The information provided should however be sufficient to meet the eligibility criteria as set forth in Clause 8.2 of RFP for the bidder to be declared as eligible.

**INFORMATION FOR TECHNICAL EVALUATION  
OPERATIONAL CAPABILITY - FORMAT 2**

All Bidder/Promoters/Member Entities (including all identified third party Strategic Alliance Management Operators who are to interface with the Bidder/ Bidding Consortium as per the envisaged technical proposal) are required to furnish information in the following formats.

Name of Bidder							
Information on Geographical Experience							
	Indian locations	1	2	3	4	5	6
1	Locations						
2	Number of years of operations						
3	Nature of activity						
4	Nature of presence (own/joint ventures/management contract/lease)						
	International Locations	1	2	3	4	5	6
1	Locations						
2	Country						
3	Number of years of operations						
4	Nature of activity						
5	Nature of presence (own/joint ventures/management contract/lease)						

Note: Above information should be provided as applicable. The information provided should however be sufficient to meet the eligibility criteria as set forth in Clause 8.2 of RFP for the bidder to be declared as eligible.



**EXHIBIT-9**  
**UNDERTAKING FOR MINIMUM GUARANTEED THROUGHPUT**

**Date:**

**Place:**

**Regional Manager**  
**Central Warehousing Corporation**  
**Regional Office,**  
.....

Dear Sir,

**Sub: Tender for appointment of SAMO at CWC, CONTAINER FREIGHT STATION (ICD), KANPUR ...reg.**

This has reference to the proposal being submitted by [name of bidder]\_\_\_\_\_, I/we hereby commit an annual Minimum Guaranteed Throughput (MGT) of ..... TEUs (Import loaded & Export loaded containers) per annum as per clause 8.2 (c) of the RFP document at CONTAINER FREIGHT STATION (ICD), Kanpur.

For and on behalf of:

Signature:  
(Authorized Signatory)  
Name of the Person:  
Designation:

Note: The source (e.g., shipping lines), nature of containerizable Cargo and the quantum (in terms of TEU throughput p.a.) of such captive cargo/other cargo that is available in the region with the bidder and the quantum of traffic that will be available for the business activity proposed at the Facility may also be provided along with the bid. (If available).

**EXHIBIT-10**  
**PRE-CONTRACT INTEGRITY PACT**

**General**

This pre-bid/pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ between on one hand, the Central Warehousing Corporation (A Govt. of India Undertaking), 4/1 Siri Institutional area, Hauz Khas, New Delhi, acting through Regional Manager, Central Warehousing Corporation (A Govt. of India Undertaking) (hereinafter called the "**CORPORATION**" which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s \_\_\_\_\_ represented by Shri \_\_\_\_\_, (Name of the SAMO Operator) (hereinafter called **BIDDER** which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the CORPORATION proposes to appoint Strategic Alliance Management Operator for providing Management, Handling and Operations Services at ICD, Kanpur and the BIDDER is willing to execute the items of work as per Contract and schedule/scope of work issued under Volume-II of RFP document.

WHEREAS the BIDDER is a private company/public company/Government undertaking/partnership firm constituted in accordance with the relevant law in the matter and the corporation is a PSU performing its functions on behalf of the Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, Govt. of India.

**NOW, THEREFORE,**

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to: -

Enabling the CORPORATION to obtain the desired said work at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and Enabling BIDDER to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the CORPORATION will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this integrity Pact and agree as follows:

**1. Commitments of the Corporation**

- 1.1 The Corporation undertakes that no official of the CORPORATION, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the

bidding process, bid evaluation, contracting or implementation process related to the contract.

- 1.2 The CORPORATION will, during the pre-bid stage, treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
- 1.3 All the officials of the CORPORATION will report to the appropriate authority any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the CORPORATION with full and verifiable facts and the same is prima facie found to be correct by the CORPORATION, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the CORPORATION and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the CORPORATION the proceedings under the contract would not be stalled.

3. **Commitments of Bidders**

The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following: -

- 3.1 The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the CORPORATION, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the CORPORATION or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the CORPORATION for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the CORPORATION.
- 3.3 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the CORPORATION or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

- 3.4 The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.5 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.6 The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the CORPORATION as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.7 The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.8 The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.9 If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the CORPORATION, or alternatively, if any relative of an officer of the CORPORATION has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filling of tender. The term 'relative' for this purpose would be as defined in Section 2(77) of the Companies Act, 2013.
- 3.10 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the CORPORATION

#### 4. **Previous Transgression**

- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### 5. **Sanctions for Violations**

- 5.1 Any breach of the aforesaid provision by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the CORPORATION to take all or any one of the following actions, wherever required: -

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
  - (ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the CORPORATION and the CORPORATION shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
  - (iv) To recover all sums already paid by the CORPORATION, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the CORPORATION in connection with any other contract for any other stores/work such outstanding payment could also be utilized to recover the aforesaid sum and interest.
  - (v) To en-cash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the CORPORATION, along with interest.
  - (vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the CORPORATION resulting from such cancellation/rescission and the CORPORATION shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
  - (vii) To debar the BIDDER from participating in future bidding processes of the CORPORATION for a minimum period of five years, which may be further extended at the discretion of the CORPORATION.
  - (viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
  - (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the CORPORATION with the BIDDER, the same shall not be opened.
  - (x) Forfeiture of Performance Bond in case of a decision by the Corporation to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 5.2 The CORPORATION will be entitled to take all or any of the actions mentioned at para 5(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

- 5.3 The decision of the CORPORATION to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the independent Monitor(s) appointed for the purposes of this Pact.

**6. Independent Monitor**

- 6.1 The CORPORATION has appointed Independent Monitors (hereinafter referred to as Monitors)
- 6.2 For this pact, in consultation with the Central Vigilance Commission. Sh. Vishnu Agarwal, Former Director (Fin.) MRPL, Flat No. 265, Vigyapan Lok, Plot No. 15, Mayur Vihar Phase-I Extension, Delhi-110091 and Sh. Anupam Kulshrestha, B-3/3, Yarrows Apartments, Plot C-58/5, Sector-62, Noida, UP-201309 have been appointed.
- 6.3 The task of the Monitor shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 6.4 The Monitor shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 6.5 Both the Parties accept that the monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 6.6 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the Corporation.
- 6.7 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Corporation including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.
- 6.8 The Corporation will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 6.9 The Monitor will submit a written report to the designated Authority of Corporation within 8 to 10 weeks from the date of reference or intimation to him by the Corporation / BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

**7. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the Corporation or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary

information and documents in English and shall extend all possible help for the purpose of such examination.

**8. Law and Place of Jurisdiction**

This Pact is subject to Indian Law and exclusive jurisdiction of the Courts at New Delhi.

**9. Other Legal Actions**

The actions stipulated in this integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**10. Validity**

- i. The validity of this Integrity Pact shall be from date of its signing and extend upto 05 years or the complete execution of the contract to the satisfaction of both the Corporation and the BIDDER/Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this integrity Pact shall expire after six months from the date of the signing of the contract.
- ii. Should one or several provisions of this Pact out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

CORPORATION

BIDDER

Name of the Officer

Designation

Witness

1. \_\_\_\_\_  
2. \_\_\_\_\_

Witness

1. \_\_\_\_\_  
2. \_\_\_\_\_

**EXHIBIT-11**  
**TERMS FOR MICRO & SMALL ENTERPRISES**

- a. Tender document shall be provided free of cost to Micro & Small enterprises (MSEs).
- b. MSEs registered with the agencies for the item/s tendered will be exempted from submission of Earnest Money Deposit (EMD).
- c. MSEs who are interested in availing themselves of these benefits and preferential treatment will enclose with their offer the proof of their being registered for goods produced and services rendered with any of the agencies mentioned in the notification of Ministry of MSME indicated below along with the bid.
  - (i) District Industries Centres
  - (ii) Khadi and Village Industries Commission
  - (iii) Khadi and Village Industries Board
  - (iv) Coir Board.
  - (v) National Small Industries Corporation
  - (vi) Directorate of Handicraft and Handloom
  - (vii) Any other body specified by Ministry of MSME.
- d. The MSEs registration should be valid as on last date of submission of tender. MSEs seeking exemption and benefits should enclose an attested / self-certified copy of valid registration certificate failing which they run the risk of their bid being passed over as ineligible for the benefits applicable to MSEs.
- e. In case the MSE does not fulfill the criteria at Sr. No(c) and (d) above, such offers will not be liable for consideration of benefits detailed in MSE notification of Government of India dated 23.03.12 and any other notification issued thereafter.
- f. Participating MSEs quoting price within price band of H1-15 percent shall also be allowed to provide the service by bringing up their price to H1 price in a situation where H1 price is from someone other than a Micro and Small Enterprise. As per Public procurement policy on MSE, considering that this is a non-divisible tender, an MSE quoting within the price band of H1-15% will be awarded for full/complete work of tender, considering the spirit of policy for enhancing the Government procurement from MSEs subject to bringing up price to H1 rate after negotiation if any, by the MSE concerned.



**EXHIBIT-12****UNDERTAKING****(FOR DISQUALIFICATION CONDITIONS)**

I \_\_\_\_\_, S/o, D/o \_\_\_\_\_, resident of \_\_\_\_\_ employed as \_\_\_\_\_ in the capacity of Director of Company/Owner of the firm/partner of the partnership firm do hereby declare that:

- i. The proprietor / any of the partners of the firm / any of the Director has/has not been [strike off inapplicable part] convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment six months or more and a period of five years has elapsed from the date of expiry of the sentence.
- ii. The proprietor / any of the partners of the firm / any of the Directors has not been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more.
- iii. That we have not been black listed by any State Government, Central Government or any other Public Sector undertaking or a Corporation or any other Autonomous Organization of Central or State Government as on the date of submission of the bid.

Date:

(Authorized Signatory)

**EXHIBIT-13****AFFIDAVIT****(For Sole Proprietary Firm)**

I,.....R/o.....do hereby solemnly affirm and declare as under:-

- i. That I am Sole Proprietor of .....(Sole Proprietor Firm Name)
- ii. That the office of the firm is situated at.....

**DEPONENT**

Place:

Date:

**VERIFICATION**

Verified that the contents of my above said affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

**DEPONENT**

Place:

Date

**EXHIBIT-14****Performa for Bid Security Declaration****(On Letter Head of Bidder)**

Whereas..... (Name of agency) ..... have submitted bids for..... (Name of work).....

I/we hereby submit following declaration in lieu of submitting Earnest Money Deposit.

1) If after the opening of tender, I/we withdraw or modify my/our bid during the period of validity of tender (including extended validity of tender) specified in the tender documents I/we shall be suspended for five years and shall not be eligible to bid for Central Warehousing Corporation tenders from date of issue of suspension order,

Or

2) If, after the award of work, I/we fail to sign the contract, or to submit performance guarantee/security deposit before the deadline defined in the tender documents, I/we shall be suspended for five years and shall not be eligible to bid for Central Warehousing Corporation tenders from date of issue of suspension order.

(Authorized Signatory)

With stamp

**EXHIBIT-15: Checklist****Central Warehousing Corporation****NIT No.** CWC/RO-LUCKNOW/BUSSI/SAMO/ICD-KNP/22-23/211

Date: 20.07.2022

**CHECK LIST OF DOCUMENTS****Tender for appointment of SAMO at CWC, ICD-Kanpur at Kanpur****Name & Address of the Bidder.....**

<b>S. No.</b>	<b>Type of Documents</b>	<b>Submission (Yes/No)</b>
<b>1</b>	Nomination of contact person and authorized signatory	
<b>2</b>	<b>Exhibit-1:</b> Covering letter	
<b>3</b>	Description of the bidder in <b>Exhibit-2</b>	
<b>4</b>	Bid consortium: <b>Exhibit-3</b> -amongst the member entities of a bidding consortium incorporating the principles (if applicable)	
<b>5</b>	Bid Consortium/Joint Venture: <b>Exhibit-4</b> - Letter of Commitment	
<b>6</b>	Handling experience as required under eligibility criteria at Clause-8.2 (a) of RFP	
<b>7</b>	Document relating to annual turnover as required under eligibility criteria at Clause-8.2 (b) of RFP	
<b>8</b>	Undertaking for commitment of MGT minimum guaranteed throughput: <b>Exhibit-9</b> [ref Clause 8.2 (c) of RFP]	
<b>9</b>	Undertaking for Disqualification Conditions: <b>Exhibit-12</b>	
<b>10</b>	Information for pre-qualification in <b>Exhibit-5, 6, 7.</b>	
<b>11</b>	Information for pre-qualification operational capability in format-1 and format-2 under <b>Exhibit-8.</b>	
<b>12</b>	Pre-contract integrity pact: <b>Exhibit-10</b>	
<b>13</b>	Audited annual accounts for the past five Financial years i.e., 2021-22, 2020-2021, 2019-20, 2018-19, 2017-18. In case audited report of 2021-22 is not available, the audited report of 2016-17 may be submitted.	
<b>14</b>	MOA and AOA in case of company/certified copy of partnership deed plus certificate of its registration with the Registrar of the firms plus current address of the firm and the full names & address of all partners of the firm. Power of Attorney in respect of the authorized signatory.	
<b>15</b>	EMD as prescribed in the tender [ref Clause 6 of RFP]	
<b>16</b>	Tenderer(s) under MSEs category should enclose the proof of being registered with the appropriate authorities as mentioned in the <b>Exhibit-11.</b>	
<b>17</b>	AFFIDAVIT for sole proprietary firm: <b>Exhibit-13.</b>	
<b>18</b>	Financial Bid, <b>Exhibit-16</b>	
<b>19</b>	<b>Exhibit-17:</b> Proposed Agreement with all Schedules and Appendix	
<b>20</b>	This Checklist duly filled up, <b>Exhibit-15</b>	
<b>21</b>	Entire NIT and RFP Document duly signed by the authorized signatory	
<b>22</b>	Performa for Bid Security Declaration: <b>Exhibit-14.</b>	

**EXHIBIT - 16**  
**FORMAT FOR FINANCIAL BID**

**(Note- The below format is indicative of price bid only. Bidder who wish to participate in e-tender need to fill data in pre-defined form of Price Bid in Excel Format only.)**

Tender for appointment of SAMO at CWC- ICD, Kanpur.

A	Minimum Fixed Fee Amount (lump sum) of <b>Rs. 32,00000/- per annum</b>	Rs. (In Figure) ----- ----- Rs. (In words) ----- -----
B	Minimum Variable Fee Amount per TEU of <b>Rs. 850 per TEU.</b>	Rs. (In Figure) ----- ----- Rs. (In words) ----- -----
C	Minimum Guaranteed Throughput <b>3000 TEU</b> per annum	Guaranteed Throughput (MGT) of ..... TEU per annum
D	Percentage of Revenue share of <b>5% on Total Turnover from operations at ICD-Kanpur.</b>	Percentage of Revenue share <b>5%</b>

**Remarks:**

- Bidder may quote a value equal to or above than the minimum annual Fixed Fee per annum and the Variable Fee per TEU as shown above at A & B in the table.
- Bidder may quote a value equal to or above than the minimum Guaranteed Throughput as shown above at C in the table.
- Percentage of Revenue Share is fixed 5% of Turnover payable by ABC to CWC and hence not to be quoted above in row D of the above table.
- The Fixed/Variable Amount are exclusive of GST.
- If there is any discrepancy in the rates quoted in figure and in words, the higher of two will be considered.

**EXHIBIT-17****AGREEMENT**

This Strategic Alliance Management Agreement (herein after referred as '**the Agreement**') is made at ..... on this..... day of ..... 20.... by and between:

**CENTRAL WAREHOUSING CORPORATION**, a Government of India Undertaking and a Corporation established under the Warehousing Corporation Act, 1962 having its Corporate Office at Warehousing Bhawan, 4/1 Siri Institutional Area, August Kranti Marg, New Delhi - 110016 (hereinafter referred to as "**CWC**", which expression shall, unless repugnant or contrary to the context thereof, deemed to mean and include its successors and permitted assigns) of the ONE PART;

**AND**

-----, a Sole Proprietorship (hereinafter referred to as the "**SAMO OPERATOR**", which expression shall, unless repugnant or contrary to the context thereof, deemed to mean and include its successors and permitted assigns).

**OR**

-----, a Registered Partnership firm (hereinafter referred to as the "**SAMO OPERATOR**", which expression shall, unless repugnant or contrary to the context thereof, deemed to mean and include its successors and permitted assigns).

**OR**

-----, a corporate entity established under .....or company registered under the Companies Act, 2013, with its registered office at -----, (herein after referred to as the "**SAMO OPERATOR**", which expression shall, unless repugnant or contrary to the context thereof, deemed to mean and include its successors and permitted assigns) of the OTHER PART.(In case of single bidder)

**OR**

-----, a corporate entity established under.....or company registered under the Companies Act, 2013,with its registered office at -----; (hereinafter referred to as the "**Lead Member**") (b) -----, a corporate entity established under .....or company registered under the Companies Act, 2013, with its registered office at -----; and (c) -----, a corporate entity established under .....or company registered under the Companies Act, 2013, with its registered office at -----, (hereinafter collectively referred to as the "**SAMO OPERATOR**", and individually referred to as Lead Member/ Member Entity which expressions shall, unless repugnant or contrary to the context thereof, deemed to mean and include the respective successors and permitted assigns) of the OTHER PART. (In case of Bidding Consortium)

**OR**

-----, company registered under the Companies Act, 2013, with its registered office at -----,(hereinafter referred to as the "**SAMO OPERATOR**", which expression shall, unless repugnant or contrary to the context thereof, deemed to mean and include its

successors and permitted assigns) being the Special Purpose Vehicle formed by Member Entities mentioned herein namely , (b) \_\_\_\_\_, a corporate entity established under.....or company registered under the Companies Act, 2013, with its registered office at \_\_\_\_\_ (hereinafter referred to as “**Lead Member**”); (c) \_\_\_\_\_, a corporate entity established under .....or company registered under the Companies Act, 2013, with its registered office at \_\_\_\_\_; and (d) \_\_\_\_\_, a corporate entity established under .....or company registered under the Companies Act, 2013, with its registered office at \_\_\_\_\_, (hereinafter individually referred to as Member Entity which expressions shall, unless repugnant or contrary to the context thereof, deemed to mean and include the respective successors and permitted assigns) of the OTHER PART. **(In case of bidding consortium with Special Purpose Vehicle)**

## WHEREAS

- A. CWC is a premier Warehousing Agency in India providing warehousing and logistic support services to diverse group of users of such services. CWC has also diversified its activities to the construction, operation and management of Private Freight Terminals (PFTs), Container Freight Stations (ICDs) and Inland Clearance Depots (ICDs) at different places in India.
- B. CWC has been interested in entering into a Strategic Alliance Management Agreement with qualified and experienced entities or consortium for Management, Handling and Operation Services in ICD, Kanpur .
- C. CWC issued a tender for the above purpose and invited the interested parties to bid for the participation with CWC as a Strategic Alliance Management Operator for the above facility on the terms and conditions contained in the RFP document;
- D. In response to the above invitation of CWC, SAMO OPERATOR has submitted their proposal for the ICD at Kanpur;
- E. The proposal of SAMO OPERATOR has been accepted by CWC Or the proposal of the Bidding Consortium consisting of the Member Entities mentioned above collectively referred to as SAMO OPERATOR has been accepted by CWC Or the proposal of the Bidding Consortium consisting of the Member Entities has been accepted by CWC and the Member Entities have formed SAMO OPERATOR as the special purpose vehicle to implement the work under the agreement (Delete whichever is not applicable);

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISE AND MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. The SAMO operator agrees to perform such Services including, any incidental services, in accordance with the terms and conditions of this Contract or as directed from time-to-time by the Regional Manager or an officer acting on his behalf, such directions not being inconsistent with this Contract, and, in consideration of its due performance of such Services, CWC agrees to retain consideration and/or to pay the SAMO operator according to the rates, terms and conditions herein contained.
2. The Contract shall comprise the following documents:

This Agreement;

- Schedule I: Conditions of Contract;  
Schedule II: Scope of Work; and  
Schedule III: Compensation Schedule;  
Appendix-1: Bank Guarantee(s)  
Appendix-2: Project Information  
Appendix-3: Layout Map of ICD-Kanpur

(All hereinafter the “**Contract**”)

3. In the event of any inconsistency or discrepancy between any of the documents listed in Clause 2 above, then precedence shall be in descending order as listed. In other words, The Agreement shall prevail over Schedule I or Schedule II would prevail over Schedule-III and likewise.
4. The terms and conditions of this Contract shall take effect from the date on which both the parties sign and execute this Contract (the “**Effective Date**”) and shall continue in force, where it is specified in the Contract that the Services shall be provided for a fixed period of time, until expiry of such period (or any extension/ determination/ termination thereof).
5. The required date for commencement of the Services at the Facility shall be as defined under Clause 1.1 (ix) of Schedule-I: General Conditions of Contract (the “**Commencement Date**”); time being declared essence of the Contract for commencement of the Services by the Commencement Date.
6. This Services shall be provided for a fixed period of five (05) years from the [**Commencement Date**] (The primary term).
7. Notwithstanding any other provisions of the Contract, no payments due to the SAMO Operator by CWC under the Contract shall be payable to the SAMO Operator until the Performance Bank Guarantee has been delivered to CWC for the relevant year(s).
8. In any event, if CWC a Corporation established under the Warehousing Corporation Act, 1962 is converted into a Company, this contract agreement will apply mutatis-mutandis.
9. For the purposes of this Contract, CWC’s Representative for contractual matters shall be [name/designation] and CWC’s Representative for operational matters shall be [name/designation].  
  
For the purposes of this Contract, the SAMO Operator’s Representative for contractual matters shall be [name/designation] and the SAMO Operator’s Representative for operational matter shall be [name/designation]. The Representative’s so nominated herein shall be deemed to have a valid Power of Attorney from the SAMO Operator in respect of this Contract and whose act(s) shall be binding on the SAMO Operator.
10. Notwithstanding contained elsewhere in this Contract, this Contract is subject to approval that may be granted by Customs Authority. In case, Customs Authority requires amendment of this Contract, which does not change/ affect the Compensation Schedule-III, the SAMO



Operator undertakes to execute necessary amendment to this Contract in accordance with Clause 17.1 of Schedule-I (Conditions of Contract). In case, Customs does not grant any permission for appointment of Strategic Alliance Management Operator or withdraw the permission during the currency of the Contract, the Contract shall be liable to be terminated by CWC with immediate effect from the date of receipt of any communication to that effect from the Customs. It is therefore, acknowledged by the parties that in the eventuality of Customs terminating/suspending the ICD operations, the Contract would stand terminated forthwith by CWC. In case of such termination, the SAMO Operator shall be entitled to payments until the date of termination in accordance with Clause 8 of Schedule-I (Conditions of Contract). CWC shall have no other financial implication whatsoever, arising due to non-approval of this Contract by Customs Authority.

11. Within thirty (30) days of receipt of the letter of award (LoA), the SAMO Operator, at its own cost and expense, shall provide to CWC an unconditional and irrevocable performance bank guarantee in the form attached as Appendix-1 (Performance Bond) hereto, issued by nationalized/Scheduled (other than cooperative bank) bank acceptable to the Company which shall be valid and enforceable for one year with a claim validity of two years in total. The SAMO Operator undertakes to renew/extend the said bank guarantee every year, thirty (30) days prior to its expiry, so that the bank guarantee remains valid throughout the Primary Term. The value of performance bank guarantee shall be equivalent to the Fixed Amount (with escalation, if applicable) and Variable Amount (with escalation, if applicable) payable for Minimum Guaranteed Throughout ("MGT") in a given year. The bank guarantee for the last year (whether 5<sup>th</sup> year or Notice Period, as the case may be) shall carry a validity of two years. In the event, SAMO Operator fails to remit and/or make payment to CWC on any account whatsoever, without prejudice to CWC's other rights, CWC shall be entitled to invoke and en-cash the said bank guarantee.

In case of failure of the SAMO Operator to deposit the Bank Guarantee within 30 working days of letter of award (LOA), further extension of 15 working days can be given at the discretion of Regional Manager. However, the SAMO Operator shall pay simple interest @12% (twelve percent) per annum for the delayed period, on the amount of the Bank Guarantee required to be submitted, without prejudice to other rights and remedies and no further extension shall be allowed at any level and the letter of award (LOA) shall stand cancelled.

The Bank Guarantee issuing bank shall send cover for Bank Guarantee issued through Structured Financial Messaging System (SFMS) platform to the CWC Banker i.e., ICICI Bank, 9 Phelps Building, Connaught Place, New Delhi, (IFSC Code: ICIC0000007) as per details given below:

- (i) MT760 COV for issuance of bank guarantee.
- (ii) MT767 COV for amendment of bank guarantee.
- (iii) Issuing bank shall mention CWC beneficiary code i.e., CENTRAL W27112020 in field 7037 of MT760 COV / MT767 COV.

The SAMO operator shall submit the copy of SFMS message as sent by the issuing bank branch along with the original Bank Guarantee.

Bank Guarantee submitted without these details shall not be accepted.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement on the day, month and year herein above written:

Signed by.....

..... [Print Name]

for and on behalf of **CENTRAL WAREHOUSING CWC**, \_\_\_\_\_(REGION)

Witness.....

..... [Witness Name]

Signed by.....

..... [Print Name]

for and on behalf of **[Name of SAMO Operator]**

Witness.....

..... [Witness Name]

**SCHEDULE I****CONDITIONS OF CONTRACT****1 INTERPRETATION**

In this Agreement, unless the context otherwise requires;

- (a) Any express reference to an enactment includes references to:
  - (i) That enactment as amended, extended or applied by or under any other enactment before, on or after the date of this Agreement;
  - (ii) Any enactment which that enactment re-enacts (with or without modification), and
  - (iii) Any subordinate legislation (including regulations) made (before, on or after the date of this Agreement) under that enactment, as re-enacted, amended, extended or applied as described in paragraph (i) above, or under any enactment referred to in paragraph (ii) above;
- (b) References to a “company” shall be construed so as to include any company, corporation or other body corporate or other legal entity or concern, wherever and however incorporated or established;
- (c) References to a “person” shall be construed so as to include any individual, firm, company, concern, trust, unincorporated association of persons, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality);
- (d) Reference to “including” and “include” shall be construed to mean “including without limitation” and “include without limitation” respectively;
- (e) References to “INR” or “Indian Rupees” are to the lawful currency from time to time of the Republic of India;
- (f) Words importing the singular shall include the plural and vice versa;
- (g) Any reference to day shall mean a reference to a calendar day;
- (h) Any reference to a month shall mean a reference to a calendar month;
- (i) The headings are for the purpose of identification and shall not affect the interpretation of the provisions and schedules;
- (j) Any schedule to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its schedules;
- (k) Any reference at any time to any agreement, deed, instrument, license or document of any description, shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;

- (l) Reference to Recitals, Articles, Sub articles, Clauses or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sub-articles, clauses and schedules of or to this Agreement;
- (m) Unless otherwise stated, 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 and dates.

## 1.1 Definitions

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

- (i) **ABC** means the bidder successful in terms of this tender enquiry for selection of Strategic Alliance Management Operator. ‘ABC’ in this document refers to and to be replaced by the name of the successful bidder.
- (ii) **Amounts Due/Any Other Dues** means any amounts that are due to CWC towards the consideration as defined in Clause 1.0 of Schedule-III (Compensation Schedule), any amount towards penalties, claims, fines, imposed on CWC by a Government agency against the Custodian Bond/Carrier/Continuity Bond furnished by CWC to the Customs with or without Bank Guarantee, for acts of SAMO Operator.
- (iii) **Agreement** means this Agreement including, Schedules and Appendix(s) hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.
- (iv) **Applicable Laws** means any statute, law, regulation, ordinance, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administrative order having the force of law of any of the foregoing, by any Government Agency having jurisdiction over the matter in question, including, “Handling of Cargo in Customs Areas Regulations, 2009” as amended from time to time.
- (v) **Applicable Permits** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws by the SAMO Operator for the services to be provided in ICD during the subsistence of this Agreement.
- (vi) **Container** means any containers used in International trade for export/import cargo, and shall include a container of 20’, 30’, 35’, 40’ and 45’ containers viz. Flat rake, Open top, Over Dimensional Cargo containers (high dome or such other size) or the like and may include, Reefer Container also. However, any container above 20’ will be treated as 40’ container only irrespective of its size being 30’, 35’, 40’, 45’ etc. and charged for two containers and considered as a FEU (2 TEUs).
- (vii) **Claim** shall mean means any and all claims, demands, liens, judgments, awards, remedies, debts, liabilities, damages, injuries, costs, losses, legal and other expenses, or causes of action of whatsoever nature, including, without limitation, those claims made or enjoyed by dependants, heirs, claimants, executors, administrators, successors or assigns, in whatever jurisdiction the foregoing may arise.
- (viii) **Consumer Price Index-IW (CPI-IW)** means the Consumer Price Index for Industrial Workers as published by the Ministry of Statistics and Programme Implementation, GOI and shall include

any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding month.

- (ix) Commencement Date of Service(s) mean within the 30 days from the date of receipt of approval from the Customs Authorities for the SAMO arrangements or receipt of first cargo consignment/container in the ICD facility, in anticipation of customs approval, whichever is earlier.
- (x) CWC's Published Tariff shall mean the charges in respect of Services as may be decided by the SAMO Operator and subsequently, published by CWC as custodian.
- (xi) Encumbrance means any encumbrance such as 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances (pertaining to the Existing Facilities) and encroachments on the said Premises.
- (xii) Facility means the area as shown in the map (at Appendix- 3) of this Contract including, the assets installed thereon as described in Schedule-II (Scope of Services), which shall be handed over to the SAMO Operator for providing services under this Contract and shall also include, any further development and/or improvisation of the said area for provision of Services.
- (xiii) Good Industry Practice means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the similar type of undertaking as envisaged under this Agreement.
- (xiv) Government Agency means the Government of India, any State Government or any Statutory/ Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, or administrative body, Central, State, or local body, having jurisdiction over ICD, Kanpur.
- (xv) Includes/ including shall mean "including without limitation".
- (xvi) Lead Member means the ..... (Name of the member of the consortium designated as the lead member) and shall have the authority to bind the consortium/ other Member Entity(s).
- (xvii) Parties means the parties to this Agreement (CWC, Bidding Consortium with all Member Entities and SAMO OPERATOR) and Party shall mean any of the Parties to this Agreement individually.
- (xviii) Party shall mean either CWC or the SAMO Operator as the context so permits and, as expressed in the plural, shall mean CWC and the SAMO Operator collectively;
- (xix) Salary: The cost to company of the employee which includes basic pay, dearness allowance (DA), HRA, perks and superannuation benefits as applicable from time to time. Reimbursable amount of salary shall be calculated as per following example:

Basic Pay: Rs 40,000/-

DA : Applicable % of DA on (i) above e.g. 14.8% DA on Basic Pay i.e. Rs 5920/-

HRA : Applicable Rate e.g. 24% on (i) i.e. Rs 9600/-  
 Perquisites: 35% on (i) above i.e. Rs 14000/-  
 Superannuation Benefits: 30% on (i) & (ii) above i.e. Rs 13776/-  
 Leave Benefits: 11.11% on (i) & (ii) above i.e. 5102/-  
 PRP: \_\_\_\_\_  
 Total: 88398/-

- (xx) SAMO Operator's Equipment shall mean all equipment and materials by the SAMO Operator Group (whether owned, leased or hired) in connection with the performance of this Contract, including, without limitation, planks, hooks, hand trolley, handcart, any mode of carriage, those referred to in the Scope of Work and shall include, scale(s) of weight, truck/ tractor trolley or transport vehicle which are mechanical driven vehicles such as lorries etc.
- (xxi) SAMO Operator Group shall mean the SAMO Operator, its sub-contractors and their respective director(s), representative(s), officer(s), employee(s), consultants (including agency personnel);
- (xxii) SAMO Operator's Personnel shall mean all personnel, employee, nominee provided by the SAMO Operator in connection with the performance of this Contract, including, without limitation, those referred to in the Scope of Work;
- (xxiii) SBI PLR means the minimum prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, the minimum average of the prime lending rates for loans with 1 (one) year maturity fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.
- (xxiv) Services shall mean the services and/or work to be performed by the SAMO Operator as provided for under the Contract and Scope of Work, including, without limitation, the provision of all personnel, equipment and carrying out auxiliary, additional and incidental duties and operations as provided in this Contract or to be inferred from this Contract.
- (xvi) Users shall mean container/ cargo owners or Customs House Agents (CHA), or any other interested party, who may use the Facility.
- (xvii) Wholesale Price Index (WPI): Wholesale Price Index or WPI means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the most recent monthly WPI as last published by the Ministry of Commerce and Industry, Government of India prior to the date of consideration.

## 1.2 1.2 Clauses

Unless otherwise stated, any and all references in the Contract to Clauses are references to the Clauses of this Schedule I of the Contract.

## 1.3 1.3 Headings

The headings in the Contract are used for convenience only and shall not govern or affect the interpretation of the Contract.

## 1.4 1.4 Plurality

Words denoting the singular shall include the plural and vice versa, where the context requires.

**1.5 1.5 Statutory References**

Except as expressly identified, any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

**1.6 1.6 Periods**

Unless expressly stated otherwise, all references to days, weeks, months and years shall mean calendar days, weeks, months and years.

**1.7 Measurements and Arithmetic Convention**

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

**2 SAMO OPERATOR's OBLIGATIONS – GENERAL****2.1 SAMO Operators Performance**

- 2.1.1 The SAMO Operator shall perform the Services with all due skill, diligence and care and in a safe, competent and workmanlike manner in accordance with good and prudent practice and in accordance with the Scope of Services.
- 2.1.2 Except to the extent that it may be legally or physically impossible or create a hazard to safety, the SAMO Operator shall comply with the Regional Manager's instructions and directions on all matters relating to the Services.
- 2.1.3 The SAMO Operator shall provide all management, supervision, personnel, equipment, consumables, and all other things, so far as the necessity for providing the same as is specified in this Contract, the Scope of Services (Schedule- II) or is reasonably to be inferred from the Contract.
- 2.1.4 The SAMO Operator undertakes at its cost and expense to carry out periodic necessary and requisite maintenance and repair of the Facility as required by "Good Industry Practice" and to ensure that the utility of the Facility is maintained without deterioration over the period of this Contract, save for normal wear and tear.
- 2.1.5 The SAMO Operator shall be responsible and liable for all dealing with third parties including the settlement of all claims of Users of the facilities or otherwise arising out of the Services provided at the Facility. However, such activities should be undertaken in due consultation with and under the supervision of CWC.
- 2.1.6 CWC, at all relevant times, shall have unfettered right to inspect the Facility at any time during the subsistence of this Contract.
- 2.1.7 The SAMO Operator shall arrange/maintain, at its cost, web-based interactive connectivity with all stakeholders, Customs, banks, importers-exporters, CHA, shipping agents, etc., as per Customs' requirements.
- 2.1.8 The SAMO Operator shall be liable for payment towards:
  - Maintenance and upkeep of infrastructure in Facility;

- Business promotion, operational expenses, staff/personal, labour expenses, expenses arising out of sub-contracting, arrangement for security of stock/ building;
  - Round the clock operations as per trade demand;
  - Cost of procurement and installation of reach-stacker, RTGC, handlers, tractor trailers or any other equipment necessary for providing Services in the Facility;
  - Insurance of any movable property of the SAMO Operator which is installed in the Facility;
  - Insurance of cargo/ containers/ stock in the Facility against all insurable risks including, responsibility for the CIF value of the stocks stored and the custom duty payable to the Customs Authority in the eventuality of any theft/ damage/ mishap/ pilferage of cargo or containers;
  - Staff and personnel expenses;
  - Water and Electricity/Power charges;
  - Telephone charges;
  - Maintenance charges of weighbridges;
- 2.1.9 The SAMO Operator shall be responsible to comply with statutory rules /regulations which are presently in force and amended from time to time by the State Government /Central Government, Customs, Port Authorities, Railways, Labour Department, Motor Vehicle Department, local self-governing bodies etc .and other applicable rules, regulations, circular etc .
- 2.1.10 The SAMO Operator shall abide by the provisions of the concerned Electricity Board / Distribution Company, Municipal Corporation /Jal Board, as the case may be, regarding consumption of water and electricity . The SAMO Operator shall be responsible to indemnify CWC against any liability/penalty/claim on the Corporation due to the deviation/failure on the part of SAMO Operator .
- ### **3 SAMO OPERATOR'S EQUIPMENT**
- #### **3.1 SAMO Operator's Equipment - General**
- 3.1.1 The SAMO Operator warrants that the SAMO Operator's Equipment shall be adequate to conduct the Services, shall be new or as new, of good quality and workmanship and shall comply in all respects with the specification under this Contract or as may be inferred from this Contract or as may be required as per Good Industry Practice.
- 3.1.2 CWC shall be entitled, at any time, to inspect all or any part of the SAMO Operator's Equipment. If any part of the SAMO Operator's Equipment does not, at any time, meet the requirements of the Contract, then the SAMO Operator shall upon notice from CWC promptly replace or repair such part of the SAMO Operator's Equipment to ensure compliance with the Contract.
- 3.1.3 The SAMO Operator warrants good title to all SAMO Operator's Equipment.
- 3.1.4 The SAMO Operator warrants that the SAMO Operator's Equipment has been examined by inspectors of any relevant certifying authority no more than six months prior to the Effective Date and shall, for the duration of the Contract and any extension thereof, conform in all respects with all applicable current laws or statutory instruments setting out regulations to be observed in respect of the Services to be rendered under this Contract.



- 3.1.5 Any inspection of any item of SAMO Operator's Equipment necessarily required during the currency of the Contract to ensure continued compliance with certification requirements, or for any other reason, shall be conducted at a time convenient to CWC (subject to any overriding limitation imposed by any certification authority). All costs connected with any such inspection shall be to the account of the SAMO Operator.
- 3.1.6 The SAMO Operator undertakes to comply with all statutory requirement(s)/ obligation(s) as may be applicable from time to time in respect of its Equipment(s). In case of non-compliance of such statutory requirement(s)/ obligation(s), the SAMO Operator shall be responsible for the same and shall be liable to CWC in case, CWC is vicariously held liable, in this regard by any Government Authority or the State Government/ Local Authority.
- 3.1.7 The SAMO Operator shall be entitled to establish such further and additional equipment(s) and infrastructure at the place of operation as the SAMO Operator may from time to time decide as necessary or useful for carrying on the Services under this Contract, provided that:
- a) all such things are undertaken in accordance with the Applicable Laws;
  - b) the SAMO Operator shall not claim any compensation or contribution from CWC including, any adjustment or reduction in the consideration receivable by CWC under this Contract;
  - c) On the expiry of the Contract or its determination/ termination in accordance with the terms contained herein, all such additions and accretion shall be left in the premises without any damage and the same shall vest in CWC free of cost without any right to or claim by the SAMO Operator or the Member Entities either for cost or expense or any other compensation. The SAMO Operator shall however be entitled to remove all movable assets, including, cargo handling equipment/machinery brought in/erected by the SAMO Operator, which are not embedded/attached to the earth and are of temporary nature, at the time of such determination/ termination/ expiry.
- 3.1.8 All costs, charges and expenses in regard to any work to be undertaken at the facilities, including, establishment/installation of new equipment(s), infrastructure, its further development and/or improvement, its day to-day management shall be borne by the SAMO Operator without any liability of CWC.

#### **4 SAMO OPERATOR'S PERSONNEL**

##### **4.1 SAMO Operator's Personnel – General**

- 4.1.1 The SAMO Operator shall, at its expense, provide and keep available for the Services, the SAMO Operator's Personnel.
- 4.1.2 The SAMO Operator shall ensure that the SAMO Operator's Personnel shall be sufficient in number and quality to carry out the Services in accordance with the terms and conditions of the Contract, and will be suitably qualified and medically fit and certified, if necessary, to perform the Services required under the Contract.

- 4.1.3 The SAMO Operator shall be responsible to obtain the necessary clearances and fulfil the requirements of all the Central and State Labour Laws as applicable from time to time. The SAMO Operator shall ensure due payment of minimum wages to the workers engaged and also ensure the safety of the workers as required under the Applicable Laws. The SAMO Operator shall ensure that necessary records and registers are maintained and the returns filed as required under the applicable Labour Laws. Notwithstanding the above all persons engaged to undertake services shall be the employees of the SAMO Operator and they shall not have any claim against CWC during the currency of contract or even after expiry of the contract period.

## **4.2 Removal of Personnel**

4.2.1 The SAMO Operator shall be responsible for the good conduct of its employee(s), representative(s) sub-contractor(s) or sub-contractor's employee(s) and shall compensate CWC for losses arising from neglect, carelessness, want of skill or misconduct of itself, its servant(s), agent(s) or representative(s).

### **4.2.2 Working Conditions and Discipline of SAMO Operator Personnel**

- (i) The SAMO Operator shall, at all times, be responsible for the conduct of the SAMO Operator's Personnel and shall ensure that they comply with all Applicable Laws and honour and observe Indian standards of morality and **behaviour**.
- (ii) The SAMO Operator shall adhere to, and ensure that its sub-contractors adhere to, all labour laws, regulations, standards and practices applicable in respect of the Facility.
- (iii) **Drugs and Alcohol**  
Neither the SAMO Operator nor any of the SAMO Operator's Personnel shall, except for bona fide medical purposes, keep, sell, barter, give, dispense or otherwise dispose of any drugs or alcoholic liquors to any person at the Facility or permit the same to be done by any person. Alcohol shall not be permitted at the Facility save in a form generally used in medicine and forming a bona fide constituent of a medical kit. CWC's Representative or the Regional Manager reserves the right to search the property and person of any member of the SAMO Operator's Personnel. CWC's Representative and/or the Regional Manager may at his absolute discretion prohibit any member of the SAMO Operator's Personnel to go on to the Facility or other facility in the control of CWC, or may require such person to leave the Facility where he has reasonable grounds to suspect non-compliance.
- (iv) CWC may, at any time after the commencement of the Services and at its sole discretion, direct the SAMO Operator in writing to remove any member of the SAMO Operator's Personnel from the Facility for any of the reasons stated in (i) to (iii), above. The SAMO Operator shall immediately comply with such direction and shall, as soon as reasonably practicable, replace, or procure the replacement of, such person with another person. The SAMO Operator shall bear the costs of any such removal and replacement.

## **5. Deemed Satisfaction**

Notwithstanding the provision of this Contract, the SAMO Operator acknowledges that it has satisfied itself in respect of all relevant matters pertaining to the Services, including,

the Facility, Scope of Services, the nature of the Services, knowledge of Facility/ place of operation/service, size of the place of operation/service, Godown(s), access to the Facility, local facilities, climatic conditions, working hygiene and working environment conditions, any security, fire, safety or other regulations which may affect the execution of the Services, existing facilities and all matters whatsoever affecting the execution of the Services and all other matters which may affect the performance of the Services. Any failure by the SAMO Operator to take into account any of the aforementioned matters shall not relieve or excuse the SAMO Operator from any of its responsibilities, liabilities or obligations hereunder or entitle the SAMO Operator to any extra payment.

## **6. REPRESENTATIVES**

### **6.1 CWC's Representative**

- 6.1.1 CWC's Representative for shall act in full charge of the Services and shall have full authority to coordinate with the SAMO Operator's Representative(s) to resolve all day-to-day operational matters which may arise between the SAMO Operator and CWC.
- 6.1.2 CWC's Representative(s) shall monitor the performance of the Services and shall have the authority necessary to enforce the provisions of this Contract.
- 6.1.3 CWC's Representative(s) shall be entitled to inspect the Services and all documentation relating thereto at any time.
- 6.1.4 The SAMO Operator shall direct all matters relating to this Contract to CWC's Representative(s) for contractual matters and shall act only in accordance with the instructions of CWC's Representative(s) for contractual matters.

### **6.2 SAMO Operator's Representative**

- 6.2.1 *The SAMO Operator's Representative(s) shall act in full charge of the Services and shall have full authority to liaise with CWC's Representative to resolve all day to day matters which may arise between the SAMO Operator and CWC.*
- 6.2.2 *It shall be the duty of the SAMO Operator and/or its Representative to be in regular contact with the offices of CWC's representative for operational matters, so as to i) obtain information about the programme of arrivals at godown(s)/facility and dispatches to various recipients; ii) other godown activities; iii) to report the progress of loading/unloading/transport work, etc.; iv) to take appropriate instructions in respect of the Services to be performed under the Contract; and/or (v) any and all information regarding Services that are being provided by the SAMO Operator in the Facility.*

### **6.3 Change of Representatives**

Either Party may:

- (a) revoke the appointment of any person appointed as that Party's representative and may appoint another person as representative in his/her place; or
- (b) Appoint any person to be an additional representative for a stated purpose.

No such revocation or appointment shall be effective until notice of it is given to the other Party.

## **7 INDEPENDENT SAMO OPERATOR**

### **7.1 Status of SAMO Operator**

The SAMO Operator shall at all times be an independent SAMO Operator with respect to performance of the Services and neither the SAMO Operator nor any person employed by the SAMO Operator shall, other than as expressly authorised by CWC in writing, either represent itself or himself (as appropriate) as, or be deemed for any purpose to be, an employee, agent, or representative of CWC in the performance of the Services. Nothing in this Contract shall be deemed to create a joint venture, partnership or agency between the Parties.

## **8. PAYMENT**

### **8.1 Payment to be accounted on monthly basis**

8.1.1. The SAMO Operator shall ensure that all the payments/ charges, including the GST, as per CWC's Published Tariff, for the Services rendered to the Users by the SAMO Operator in a month (or pro-rata thereof), are collected from the Users and deposited directly into CWC's Bank Account.

The GST compliant tax invoices must be raised to the users in the name of the CWC, including but not limited to the compliance with Rule 46 of CGST Rules, e-invoicing and dynamic QR code on B2C invoices. The IRN for the e-invoice must be generated immediately at the time of issuance of invoice to the customer.

8.1.2 Out of the collections referred to in Clause 8.1.1 above, CWC shall be entitled to retain its consideration, on a monthly (or pro-rata thereof) basis at the end of each month, the following amounts, excluding GST:

- (i) The amount payable to CWC under Clauses 1.0 (i), (ii) and (iii) of Schedule-III (Compensation Schedule);
- (ii) Other Expenses in accordance with Clause 3.0 of Schedule-III (Compensation Schedule).

8.1.3 Balance collection available, after retention under 8.1.2 above, shall be remitted to the SAMO Operator along with applicable GST, within 07 working(seven) days of submission of bill/invoice with complete details by the SAMO Operator subject to submission of tax invoice as per Rules under GST Law duly certified by CWC's representative for operational matters. Any of the SAMO Operator's invoice not complying with the provisions hereof will be returned by CWC to the SAMO Operator whereupon, the SAMO Operator shall submit a rectified invoice. CWC shall accordingly, make payment of such rectified invoice in accordance with this Clause 8.1.3.

The SAMO Operator must raise a GST compliant tax invoice to the CWC to claim its share. The e-invoice will be raised by the SAMO Operator to the CWC, if its turnover exceeds the prescribed limit prescribed by the Government in this regard. An invoice without IRN shall not be accepted by CWC in such a scenario. Where the e-invoicing provisions are not applicable to the SAMO Operator, it shall provide an undertaking confirming the same. Further, the SAMO Operator is required to provide all the relevant details required under the GST provisions, such as description, HSN code,

- tax type and tax percentage. The SAMO Operator must use the GSTIN of applicable unit of CWC.
- 8.1.4** In case SAMO Operator fails to ensure collection of the monthly payment(s)/ charge(s) including the GST, as per CWC's Published Tariff, for the Services rendered to the Users by the SAMO Operator in a month (or pro-rata thereof) and the monthly collection is less than the amount payable to CWC under Clause 1.0 of Schedule-III (Compensation Schedule) and the Expenses (Clause 3.0 of Compensation Schedule-III), CWC shall raise a bill/ invoice for the differential amount along with GST [i.e. Total collection from User(s) in a month less (a) CWC's entitlement under 1.0(i) + 1.0(ii) + 1.0(iii) of Schedule-III (Compensation Schedule) and (b) Expenses (Clause 3.0 of Compensation Schedule-III)], the SAMO Operator shall make the payment of the said invoice within 07working(seven) days from the receipt of such bill/invoice. Failure to adhere to the payment schedule by the SAMO Operator will be termed as breach of the Contract.
- 8.1.5** In the event SAMO Operator fails to make payment of the amount due to CWC, without prejudice to its other rights CWC shall be entitled to invoke and en-cash the Bank Guarantee. The encashment of the Bank Guarantee shall be without prejudice to CWC's right to treat the non-payment of the amount by the SAMO Operator on the due date as a breach and terminate the Agreement and also to claim simple interest @12% (twelve percent) per annum for the delayed period without prejudice to other rights and remedies as may be available to CWC.
- 8.2 CWC's right to set-off**
- 8.2.1** CWC shall be entitled to deduct or set-off Amounts Due/Any Other Dues from any Amounts Due or Any Other Dues or becoming due to the SAMO Operator under this Contract or any other Contract between CWC and the SAMO Operator, including, all claims, levies, costs, damages or expenses etc. for which the SAMO Operator is liable to CWC under this Contract.
- 8.2.2** CWC shall also have the right to deduct from any amount due to the SAMO Operator, any sum required for making good, the loss suffered by SAMO Operator's sub-contractor(s) and/or personnel(s), by reasons of non- fulfilment of any of the Applicable Laws, non-compliances by the SAMO Operator, or non-payment of dues to the SAMO Operator's Personnel. The SAMO Operator shall not have any claim, issue or dispute as to whether or not such sum(s) paid to the SAMO Operator's Personnel(s) directly or to any Government Authority, State Government/Local Authority, by CWC on behalf of the SAMO Operator, was/were validly due.
- 8.3** CWC will not be responsible for any non-compliance/ liability arising out of non-deduction/ deposit of TDS by the Users/ SAMO Operator with respect to payment(s)/ charge(s) collected/received against the Services rendered to the Users by the SAMO Operator and deposited directly into CWC's Bank Account.
- 8.4** CWC shall deduct GST at source at applicable rates in case transactions under this contract are liable to GST deduction at source. Under GST regime, the SAMO Operator is required to correctly and timely disclose the details of output supplies to CWC as per GST rules in his GST returns. Non-compliance would result in mis-matching of claims and denial of input tax credit to CWC.

Notwithstanding anything contained in agreement/contract, in case of such default by the SAMO Operator, the amount of Input tax credit denied in GST along with interest and penalty shall be recovered from the amounts payable to the SAMO Operator or the available Bank Guarantees.

**8.5** GST paid by the Users to CWC's bank account shall be deposited by CWC directly with the concerned Govt. Department in accordance with the relevant provisions after availing input tax credit of the GST paid to the SAMO Operator in accordance with provision of GST. Thus, the GST recovered by CWC from the Users shall not form part of the collection/receipts referred to in clause 8.1, hereinabove.

**8.6** The SAMO Operator shall be liable to indemnify CWC for any tax demand and interest and/or penalty thereon arising due to negligence/fault of the SAMO Operator.

**8.7** Payments made by CWC to the SAMO Operator would be subject to Tax Deduction at Source as per the relevant provisions of the Income Tax Act, 1961 and the rules made thereunder.

#### **8.8 Audit**

The SAMO Operator shall maintain proper and accurate records in relation to this Contract and shall provide copies of the same to CWC on request. CWC (or its appointed representative) shall have the right to audit the relevant books and accounts of the SAMO Operator in relation to any transaction under this Contract. Such audit right shall survive for a period of two (2) years following the expiry or termination of the Contract. Any incorrect payments identified by such audit shall be adjusted between the Parties, as appropriate. The SAMO Operator shall produce the required documents information and returns at such time and place as may be directed by CWC's Representative for contractual matters.

#### **8.9 Liens**

**8.9.1** The SAMO Operator shall not claim any lien, charge or the like on any aspect of the Services or on any property/ Facility of CWC. The SAMO Operator shall defend, indemnify and hold CWC harmless from and against any Claim in connection with any lien, charge or the like created or caused by any member of the SAMO Operator Group arising out of or in connection with the performance of this Contract.

**8.9.2** Without prejudice to the generality of Clause 8.9.1, should any act or omission of the SAMO Operator Group result in any lien, charge or the like existing upon the property of CWC, the SAMO Operator agrees to refund to CWC upon demand all monies that CWC may be compelled to pay to discharge any such lien.

#### **8.10 Subcontracts**

- (i) The SAMO Operator shall ensure that the provisions of the foregoing Clauses 8.8 (Audit) and 8.9 (Liens) are included in all agreements it shall enter into with any subcontractors who shall supply any personnel/labour or equipment to be provided under this Contract.
- (ii) The SAMO Operator agrees to furnish to CWC, promptly on request, a full and complete statement that all the SAMO Operator's suppliers, subcontractors and vendors have been paid in full for work done or materials furnished in connection with the performance of the Services.

### **9. TAXATION**

#### **9.1 Definitions**

For the purposes of this Clause 9 (Taxation):

- (a) "Tax" or "Taxes" means taxes, levies, duties, fees, charges and contributions as amended from time to time and any interest or penalties thereon;
- (b) "Government Authority" means the Government of India/ National Government or Authority of the country, competent to levy any Tax.
- (c) "State Government/Local Authority" shall mean to include the Government at the State Level and local and/or other statutory authorities, competent to levy any Tax and shall also include local, administrative and municipal body(s).

## **9.2 Person Responsible for payment of taxes**

9.2.1 Except as may be expressly set out in this Contract, the SAMO Operator shall be responsible for:

- (a) the payment of all Taxes now or hereafter levied or imposed on the SAMO Operator or its subcontractors or on the personnel of the SAMO Operator or its subcontractors by the Government Authority and/or State Government/Local Authority in respect of any wages, salaries and other remuneration paid directly or indirectly to persons engaged or employed by the SAMO Operator or its Sub-Contractors (hereinafter referred to as "**Personal Income tax**");
- (b) the payment of all Taxes now or hereafter levied or imposed by any Government Authority and/or State Government/Local Authority on the actual/assumed profits and gains made by the SAMO Operator or its subcontractors (hereinafter referred to as "**Corporate Income tax**");
- (c) The payment of any other Taxes now or hereafter levied or imposed by any State Government/Local Authority on the SAMO Operator or its subcontractors as a result of the performance of this Contract.

## **9.2.2 Withholding taxes and Withholding Certificates**

- (i) CWC shall, at the time of its payments due to the SAMO Operator, withhold the necessary taxes at such rate as is required by any Government Authority and/or State Government/Local Authority, unless and to the extent that the SAMO Operator shall produce to CWC any certificate issued by a Government Authority and/or State Government/Local Authority (having authority to issue such certificate) entitling the SAMO Operator to receive the payments under the Contract for a prescribed period without deduction of any tax or deduction at a lower rate.
- (ii) CWC shall provide the necessary withholding tax certificates to the SAMO Operator within the time stipulated by the relevant law to enable the SAMO Operator to file the same with the Government Authority and/or State Government/Local Authority, as a proof of payment of such taxes.

## **9.3 Person Responsible for filing of returns / information to Government Authority and/or State Government/Local Authority**

9.3.1 The SAMO Operator shall be responsible for filing all necessary Tax Returns (including, without limitation, returns for Corporate Income Tax, Personal Income Tax) with the relevant Government Authority or State Government/Local Authority in accordance with

all applicable statutory requirements and shall be responsible for providing all information requested by such Government Authority or State Government/Local Authority.

- 9.3.2 The SAMO Operator shall also ensure that its sub-contractors file such returns as stipulated by the relevant Government Authority or State Government/Local Authority and furnish such information as requested for by the relevant Government Authority or State Government/Local Authority.
- 9.3.3 CWC, with respect to the tax withheld from the SAMO Operator in accordance with Clause 9.2.2 (Withholding Tax and Withholding Tax Certificates), shall be responsible for filing the withholding tax returns with the relevant Government Authority or State Government/Local Authority, in accordance with applicable statutory requirements.

#### **9.4 CWC's rights, if treated as representative assessee by Government Authorities**

In certain situations, a Government Authority or State Government/Local Authority, may treat CWC as the representative assessee of the SAMO Operator and/or its subcontractors and recover the Taxes due to the Government Authority or State Government/Local Authority, by the SAMO Operator or its subcontractors from CWC. In such situations, CWC shall have the following rights:

- (a) CWC shall be entitled to recover from the SAMO Operator, the Taxes paid on behalf of the SAMO Operator or its subcontractors (together with any costs and expenses incurred by CWC in connection therewith) or to retain the same out of any amounts to be paid to the SAMO Operator or its subcontractors that may be in its possession (whether due under this Contract or otherwise) and shall pay only the balance, if any, to the SAMO Operator; and
- (b) If CWC is required to furnish any details or documents in such capacity, CWC shall request the details or documents to be furnished to it by the SAMO Operator and the SAMO Operator shall immediately furnish the same to CWC. If the SAMO Operator fails to comply with the foregoing, any penalty/interest levied on CWC for non-filing or late filing of details or documents in this regard shall be recoverable from the SAMO Operator.

#### **9.5 Income Tax Compliances**

The SAMO Operator shall maintain all financial and tax records required under the existing laws including the records which are generally maintained as custom of the trade. Further the SAMO Operator shall allow CWC to access all such data on real time basis. The SAMO Operator shall also support CWC by providing such data and information as any statutory agency/third party may ask for. In case of any statutory default is done by the SAMO Operator, the SAMO Operator shall be solely liable to same and CWC shall recover the same from the SAMO Operators dues.

#### **9.6 Indemnity**

The SAMO Operator shall defend, indemnify and hold CWC harmless from and against any Claim in connection with any Taxes which may be levied or imposed on the SAMO Operator or its subcontractors by any Government Authority arising out of or in connection with the performance of this Contract.



## **10. INDEMNITIES**

### **10.1 General**

10.1.1 The indemnities granted in this Clause shall be full and primary notwithstanding the Insurance(s) that may be obtained by the SAMO Operator.

10.1.2 Each Party shall give the other prompt notification of any claim with respect to any of the indemnities hereunder, accompanied by full details of the circumstances of any incident giving rise to such a claim.

### **10.2 Property and Injury to Personnel**

10.2.1 The SAMO Operator shall be liable for, and shall defend, indemnify and hold CWC harmless from and against any Claim in connection with:

(a) loss of or damage to the property of the SAMO Operator Group (including, the SAMO Operator's Equipment); and

(b) death or sickness of or injury to any member of the SAMO Operator Group (including, the SAMO Operator's Personnel)

arising out of or in connection with the performance of this Contract, whether or not resulting from or contributed to by any negligence and/or breach of duty (statutory or otherwise) of CWC.

10.2.2 CWC shall be liable for, and shall defend, indemnify and hold the SAMO Operator Group harmless from and against any Claim in connection with:

(a) loss of or damage to the property of CWC (but excluding any property/ Facility of CWC in the care, custody or control of the SAMO Operator Group); and

(b) death or sickness of or injury to any member of CWC

arising out of or in connection with the performance of this Contract, whether or not resulting from or contributed to by any negligence and/or breach of duty (statutory or otherwise) of the SAMO Operator Group.

### **10.3 Third Party Liability**

10.3.1 The SAMO Operator shall be liable for, and shall defend, indemnify and hold CWC harmless from and against any Claim in connection with:

(a) loss of or damage to any Third-Party property; and

(b) death or sickness of or injury to any Third Party

Arising out of or in connection with the performance of this Contract, to the extent caused by any negligence and/or breach of duty (statutory or otherwise) of the SAMO Operator Group. For the purposes of this Clause 17 (Indemnities), the words "Third Party" shall mean any party which is not a member of CWC or the SAMO Operator Group.

- 10.3.2 As a Custodian of the Facility at ICD-Kanpur, CWC will be responsible for any claims raised by the Customs or any other Govt. agency related to the functioning of ICD-Kanpur including, for any lapse on part of the SAMO Operator or on the part of its employees. CWC will also be responsible for any claims raised by any other Govt. agency related to the functioning of the awarded facility i.e. ICD-Kanpur owing to any lapse on SAMO Operator's part or on the part of its employees. With respect to the above, the SAMO Operator shall indemnify CWC towards such claims from Customs and other govt. agency on actual basis and shall pay the amount within 7(seven) working days from the date of claim made by CWC failing which the same shall be adjusted out of payable amount of the SAMO Operator.
- 10.3.3 The SAMO Operator shall always keep CWC fully indemnified against the losses, damages, claims, penalties or any other such payments, made to any person including payments made by CWC against the custodian bond (with or without Bank Guarantee) submitted by CWC to the Customs in respect of the operations being carried out by the SAMO Operator or their representatives or agents. However, without affecting indemnity claim to CWC, the SAMO Operator shall have a right to defend / pursue the same before appropriate forum / authorities at its own cost. Further, if a custodian bond is required to be given by CWC to Customs for ICD, Kanpur, the SAMO Operator shall furnish a back-to-back Indemnity Bond for proportionate amount to CWC as per the terms and format of the said bond given to Customs.
- 10.4 If the SAMO Operator is a consortium of two or more parties, irrespective of division of scope of work amongst inter-se between such parties, all such parties shall be jointly and severally bound to CWC for the fulfilment of all the obligations arising out of this Contract.

## **11. CONSEQUENTIAL LOSS**

Notwithstanding any provision to the contrary elsewhere in this Contract and whether or not resulting from or contributed to by any negligence and /or breach of duty (statutory or otherwise):

- (a) CWC shall be liable for, and shall defend, indemnify and hold the SAMO Operator Group harmless from and against CWC's own consequential or indirect loss arising out of or in connection with the performance of this Contract; and
- (b) The SAMO Operator shall be liable for, and shall defend, indemnify and hold CWC harmless from and against the SAMO Operator Group's own consequential or indirect loss arising out of or in connection with the performance of this Contract.

## **12. FORCE MAJEURE**

### **12.1 General**

No failure or omission by either Party to carry out or to perform any of the terms or conditions of this Contract shall give the other Party a claim against such Party, or be deemed a breach of this Contract, if and to the extent that such failure or omission arises from Force Majeure.

The Party prevented from performing due to Force Majeure shall promptly, and in any case within 48 hours, notify the other Party of the nature and anticipated duration thereof and shall use all reasonable endeavours to resume performance of this Contract as soon as reasonably possible. The Party prevented from performing due to any such cause shall, in addition, furnish the other Party with such information in respect of such cause as the other Party may reasonably require.

## 12.2 Definition

The term “Force Majeure”, as used in this Contract, shall only mean:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, military invasion, insurrection of military or usurped power; or
- b) earthquake, flood (excluding normal seasonal rain), tsunami, or any other natural disaster, but excluding weather conditions as such, regardless of severity; or
- c) fire or explosion (being fire or explosion not caused by the negligence of the affected Party or its sub-contractors); or
- d) acts of Government which could not have been reasonably anticipated or controlled which makes performance impossible or impracticable.; or
- e) Epidemic and/or pandemic affecting the Services except if the services fall under any exempted category.

For the sake of clarification, the SAMO Operator acknowledges that any strike(s) by SAMO Operator’s personnel, labour, or its sub-contractor’s personnel, labour, which affects a substantial or essential portion of the Services, shall not be an event stipulated under the definition of Force Majeure. In such an event, the SAMO Operator shall be fully responsible for any loss or damage that CWC may suffer on this account.

Also, any change in Customs policies during the currency of the contract shall be treated as the business risk and shall not amount to Force Majeure condition.

12.3 In the event the force majeure situation continues for a period exceeding consecutive 180 (one hundred & eighty) days either party may terminate the agreement by giving 30 (thirty) days’ notice to the other party and on the expiry of the notice period the Agreement shall terminate for all intent and purposes.

12.4 In the event of termination under this provision 12.3, CWC’s sole liability in respect of such termination shall be to pay to the SAMO Operator, all sums properly due to the SAMO Operator under the Contract in respect of the Services (or terminated part thereof) up to the date of termination.

## **13 LIQUIDATION OR INSOLVENCY**

### **13.1 CWC's Right to Terminate**

In the event that the SAMO Operator, at any time during the term of this Contract, becomes insolvent under any of the provisions of any applicable statute or makes a voluntary assignment of its assets for the benefit of creditors, is adjudged bankrupt, either upon the SAMO Operator's voluntary petition in bankruptcy or upon the petition of the SAMO Operator's creditors, or any of them, or should a judgement be executed on any of the goods or equipment of the SAMO Operator, or should any lien or other right inconsistent with the SAMO Operator's title to such goods or equipment be enforced, or if the SAMO Operator shall have a receiver, administrator, administrative receiver and/or manager appointed in respect of all or any of its assets, an application or order is made or a resolution is passed to wind up the SAMO Operator or if the SAMO Operator shall go into liquidation (whether voluntarily or otherwise) or if the SAMO Operator becomes subject, under the Applicable Laws of any jurisdiction, to any event having an analogous effect to any of the foregoing, the CWC may terminate this Contract with immediate effect by notice in writing to the SAMO Operator or to the receiver or liquidator or to any person in whom the Contract may become vested, as provided in Clause 14.3 (Termination due to Default).

## **14 TERMINATION**

### **14.1 Termination without Cause**

Subject to Clause 14.7 (Lock-in Period, if applicable), either party may, at its option, terminate all or any part of the Services or the Contract without cause at any time by giving no less than one (1) year prior written notice to the other ("Notice Period"), subject to the provisions of Clause 14.2 (Reimbursement to SAMO Operator).

#### **1.7 14.2 Reimbursement to SAMO Operator**

In the event of termination under the provisions of Clause 14.1 (Termination without Cause), CWC's sole liability in respect of such termination shall be to pay to the SAMO Operator, all sums properly due to the SAMO Operator under the Contract in respect of the Services (or terminated part thereof) up to the date of termination.

For the sake of clarity, it is agreed that during the Notice Period, the entire operations at Facility shall be continued in terms of the provisions of this Contract, including the considerations payable to CWC.

### **14.3 Termination due to Default and Custom's non-approval of this Contract**

14.3.1 CWC may, at its option, terminate all or any part of the Services or the Contract forthwith by written notice to the SAMO Operator, where: -

- (a) The SAMO Operator has breached any of its obligation(s) under the Contract, provided that, where remediable, CWC has notified the SAMO Operator of such breach in writing and the SAMO Operator has, upon receipt of such notice, failed to immediately commence and thereafter continuously proceed to remedy such breach to CWC's reasonable satisfaction; or

- (b) The SAMO Operator is not ready to commence the Services at the Facility by the Commencement Date of Services; time being declared essence of the Contract for commencement of the Services by the Commencement Date; or
  - (c) The SAMO Operator fails to provide/maintain the Performance Bank Guarantee as stipulated under this Contract;
  - (d) As provided in Clause 13 (Insolvency), if one or more of the circumstances in that Clause apply.
  - (e) Passing and confirmation of any winding up order or appointment of a liquidator, provisional or otherwise, administrator, trustee or receiver of the whole of the undertaking of the SAMO Operator by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings and such legal proceedings are not dismissed within 60 days;
  - (f) SAMO Operator being disqualified under any other Applicable Law or Applicable Permits to effectively carry on the activities under the Agreement.
  - (g) SAMO Operator abandoning or unilateral withdrawal from the agreement.
  - (h) In case, Customs Authority refuses to accord its approval to this Contract as provided in Clause 11 of the Agreement.
- 14.3.2 Upon occurrence of SAMO Operator's Event of Default, CWC shall be entitled to terminate this Agreement by issuing termination notice. If CWC decides to terminate this Agreement, it shall in the first instance issue preliminary notice for termination to the SAMO Operator. Within 15 (fifteen) days of receipt of this preliminary notice for termination, SAMO Operator shall forward to CWC its proposal to remedy/cure the underlying Event of Default (the "SAMO Operator Proposal to Rectify") In case of non-submission of SAMO Operator proposal to rectify within the stipulated period therefore, CWC shall be entitled to terminate this Agreement by issuing Termination Notice. If the SAMO Operator proposal to rectify is forwarded to the CWC within the period stipulated, SAMO Operator shall have further period of 30(thirty) days to rectify the default. If SAMO Operator does not rectify the default within the said period, CWC shall be entitled to terminate this Agreement by issuing termination notice.
- 14.3.3 If termination occurs pursuant to this Clause 14.3.1, above, then CWC's sole liability to the SAMO Operator shall be to pay to the SAMO Operator all sums properly due to the SAMO Operator under the Contract in respect of the Services (or terminated part thereof) up to the date of termination as computed in accordance with Compensation Schedule-III. Nothing shall be due and payable to SAMO Operator if it fails to commence the Services at the Facility by the Commencement Date.
- 14.3.4 On termination under this Clause 14.3.1 (a)-(h), the SAMO Operator in default, shall be debarred from participating in any future tenders of CWC for a period of five years. After completion of such five years, the defaulting SAMO Operator may be permitted to participate in the future tenders of CWC provided that all the recoveries/ dues/ adjustments have been affected by CWC and there is no dispute pending with the SAMO Operator.
- 14.3.5 On occurrence of any of the events contemplated under Clause 14.3.1 (a)- (d) above, whether or not leading to termination of the Contract by CWC, CWC or its Representative

shall, at its sole discretion, in whatever manner it deems fit, shall be at liberty to engage other SAMO Operator(s) and/or other party at the risk and cost of the SAMO Operator, without requirement of a notice to SAMO Operator in this regard, who shall be liable to make good to CWC all additional charges, expenses, cost or losses that CWC may incur or suffer thereby. The SAMO Operator shall not, however, be entitled to any gain resulting from entrustment of the work to another party. The decision of CWC's Representative for contractual matters shall be final and binding on the SAMO Operator.

- 14.3.6 On termination under this Clause 14.3.1 (a)-(i), the SAMO Operator undertakes to extend the validity of the then existing Bank Guarantee for two years from the effective date of termination.

#### **14.4 Saving of Rights**

The termination or expiry of this Contract shall be without prejudice to the rights and obligations of the Parties up to and including the date of such termination or expiry, and shall not affect or prejudice any term of this Contract that is expressly or by implication provided to come into effect on, or continue in effect after, such termination or expiry.

#### **14.5 Consequences of Termination**

- 14.5.1 In the event of termination under any provision of this Contract, the SAMO Operator shall:

- (a) promptly cease performance of the Services (or relevant part thereof) and, as directed by CWC, clear all unnecessary SAMO Operator's Equipment and SAMO Operator's Personnel from the Facility;
- (b) allow CWC all necessary rights of access to the Facility to take over the Services (or relevant part thereof); and
- (c) if, and to the extent, requested by CWC assign any subcontracts or other rights and titles relating to the Services (or relevant part thereof) which the SAMO Operator may have entered into or acquired.
- (d) Duly hand back the vacant and peaceful possession of the Facility to CWC in sound working condition and without any encumbrance. It shall also tally and handover the inventory of all the containers/ cargo/ consignment including live containers/ cargo/ consignments and longstanding/ unclaimed/ un-cleared/time barred goods in possession at the facility along with complete & full details of each of the containers/ cargo/ consignments in the inventory on hand.

- 14.5.2 In case of SAMO Operator's failure to handover the possession of Facility, as per above, the Facility of CWC would be got vacated/cleared from the SAMO Operator under the provisions contained in Public Premises (Eviction of Unauthorized Occupants) Act 1971, at the risk and cost of the SAMO Operator. Any damage to the property or Facility of CWC, arising out of the business operations of the SAMO Operator, save for normal wear and tear, shall be made good by the SAMO Operator.

- 14.5.3 **Dealing with Existing & Left-Over Cargo/Containers after termination of Contract:**

- a. The existing and left-over cargo/container(s) on the exit of SAMO shall be delivered/auctioned under customs supervision. The sale proceeds of the cargo/container(s) after adjusting the auction expenses, freight and duty, shall remain with CWC only.
- b. Similarly, in respect of cargo/containers described at a) above the charges realized after delivery shall remain with CWC only.

#### **14.6 Survival of Clauses upon Expiry/Termination**

The provisions of Clause 8 (Payment), 9 (Taxation), 10 (Indemnities), 11 (Consequential Loss), 14 (Termination), 17 (General Legal Provisions) and 19 (Governing Law and Jurisdiction) shall survive the expiry or termination of the Contract and shall remain in full force and effect after such date.

#### **14.7 Lock-in Period**

14.7.1 There is no lock-in period in this agreement.

14.7.2 If the bidder proposes to enter into lock-in period, bidder shall submit investment plan for redevelopment and creation of additional facilities over and above the existing operational facilities of CWC, for the sole consideration of CWC to permit lock-in period demanded by the SAMO.

14.7.3 During the lock-in period, if approved as per Clause 14.7.2 the provision of Clause 14.3 shall be applicable and the contract may be terminated by CWC in event of any default as listed in Clause 14.3.

14.7.4 If the bidder proposes to enter into lock-in period, then SAMO shall submit an additional Bank Guarantee equivalent to one year of fixed and variable fee payable to CWC.

14.7.5 If the SAMO Operator abandons the facility and withdraws from the Contract during this lock in period, then CWC shall have a right to invoke and en-cash any of the Performance Bank Guarantees under this Contract and adjust the payable amount due to CWC, either for the balance lock-in period or any Amounts Due or Any Other Dues and seize and auction movable assets of SAMO to recover the due amount during the balance lock-in-period.

### **15 PERMITS, LAWS AND REGULATIONS**

#### **15.1 Permits and Authorisations**

- (i) Except to the extent that the same have been obtained by CWC, the SAMO Operator shall, at its own cost, be responsible for obtaining all Applicable Permits including, certificates, licenses, permits, clearances, approvals and authorizations required for the performance of the Services and in respect of the SAMO Operator's Equipment and the SAMO Operator's Personnel and for all approvals and permits required for the SAMO Operator to engage in business and provide services of the nature contemplated by this Contract. The SAMO Operator shall at all times ensure compliance with all such certificates, licenses, permits, approvals and authorizations referred to in this Clause 15 (Permits, Laws and Regulations). For the avoidance of doubt, the provisions of this Clause 15 (Permits, Laws and

Regulations) pertain not only to the present legal and Government requirements, but also to the legal and Government requirements for the entire period of the Contract.

- (ii) The SAMO Operator shall apply for license to the prescribed licensing authority through CWC in terms of Section 12 of the Contract Labour (Regulation & Abolition) Rules, 1970 before entering upon any work under the Contract. The SAMO Operator shall also obtain temporary licenses, whenever required, under Rule 32 of the relevant Rules in cases, where he intends to employ more labour in number than that mentioned in the regular license, for short durations not exceeding 15 days. The SAMO Operator shall get the temporary license renewed, whenever necessary, through CWC. If for any reason, the application for a license is rejected by the licensing/appellate authority, the Contract shall be liable to be terminated at the risk and cost of the SAMO Operator and the decision of CWC in this regard shall be final and binding on the SAMO Operator.

## **15.2 Laws**

- 15.2.1 The SAMO Operator, during the period of this Contract, shall be responsible for maintaining all legal and statutory compliances (the "Compliances") with respect to its Equipment(s), Personnel(s) employee(s) and/or nominees, including payment of all relevant social security benefits, under all the Labour Law legislations, as may be applicable to the SAMO Operator, from time to time.
- 15.2.2 The SAMO Operator shall be responsible for the compliances with all the rules, regulations and/or directions issued by any Local Authority such as Customs, Police, Municipal authorities etc.
- 15.2.2 The SAMO Operator shall be required to maintain a register showing the details of payments made to the relevant statutory authorities with respect to the Compliances, which register along with the monthly challans shall be made available by the SAMO Operator for verification (Audit) by CWC Representative(s), upon request, from time to time.
- 15.2.3 The SAMO Operator shall also provide a quarterly report to CWC in proof of the compliance of such obligation of the SAMO Operator.
- 15.2.4 The Parties hereby agree that any violation of the laws with respect to any of the employee/nominee supplied by the SAMO Operator, under any legal enactment, made by any Government Authority and/or State Government/Local Authority, including, without limitation, the Workmen's Compensation Act, 1923, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Maternity Benefit Act, 1961, Contract Labour (Regulation and Abolition) Act, 1970, the Payment of Gratuity Act, 1972, Equal Remuneration Act, 1976, Minimum Wages Act, 1948 or the Industrial Disputes Act, 1947, or any other labour law legislation, as the case may be, either existing or that might come into effect during the performance of Services under this Contract, shall be the sole responsibility of the SAMO Operator, which shall, if necessary, volunteer itself before any forum or court of law to clarify any confusion or dispute arising from any such violation of the laws.
- 15.2.5 Without prejudice to the above and notwithstanding the fact that any other legislations, enactments or any statutory modifications thereof, are applicable or not to the employee/labour/ worker/ Personnel provided by the SAMO Operator under this Contract, the SAMO Operator shall adhere to the obligations.



**15.3 Indemnity**

- 15.3.1 The SAMO Operator shall defend, indemnify and hold CWC harmless from and against any Claim, in connection with Clause 15.1 and 15.2, which may be levied or imposed on the SAMO Operator or its subcontractors by any Government Authority, State Government/ Local Authority arising out of or in connection with the performance of this Contract.
- 15.3.2 For the above purpose, CWC shall have the liberty to set-off, from the amount payable by CWC to the SAMO Operator, the entire amount (or part thereof) towards satisfaction of any sum(s) due or all costs, damages or expenses for which the SAMO Operator is liable to CWC under this clause.

**16. BUSINESS ETHICS**

- 16.1 The SAMO Operator shall at all times perform this Contract in a lawful manner consistent with the highest ethical standards and principles, including strict adherence to the Business Ethics. The SAMO Operator shall not at any time enter into any arrangement with personnel, officers or agents of CWC or its employees, officers or representatives.
- 16.2 In conducting its business, SAMO Operator shall not, at any time, either directly or indirectly, in the name of, on behalf of, or for the benefit of CWC, offer, pay, promise to pay, or authorize the payment of any money and/or gift, or offer, give, promise to give, or authorize the giving of anything of pecuniary value or otherwise to (a) any official, employee, agent, or representative of any government, or any government department, agency, or instrumentality thereof; (b) any political party or official thereof, or to any candidate, nominated or otherwise, for political office; or (c) any official, employee or agent of CWC; in each case for the purpose of influencing any act or decision of such official, employee, agent, party, or candidate or inducing such official, employee, agent, party, or candidate to do or omit to do any act in violation of the lawful duty of such official, employee, agent, party, or candidate, or securing any improper advantage for or otherwise promoting the business interests of the SAMO Operator in any way. SAMO Operator shall require each of its directors, officers, employees, agents, consultants, subcontractors and suppliers to comply with the provisions of this clause.
- 16.3 Notwithstanding anything contained in this Contract, in the event CWC believes that the SAMO Operator is engaged in corrupt practices or is acting in contravention of the aforesaid provisions defined in this clause, during the existence of this Contract, CWC shall have the right to take appropriate action, which may include the immediate termination of this Contract.

**17 GENERAL LEGAL PROVISIONS****17.1 Amendment**

This Contract shall not be amended except by an instrument in writing expressed to be an amendment or variation hereto and executed by the Parties.

**17.2 Waiver**

No delay or failure on the part of either Party to enforce from time to time all or any part of the terms and conditions of this Contract shall be interpreted as a waiver of such terms and conditions.

### **17.3 Retention of Rights**

Except in respect of the indemnities granted pursuant to Clause 10 (Indemnities), unless otherwise specifically stated, both CWC and the SAMO Operator shall retain all rights and remedies, both under the Contract and at law, which either may have against the other.

The SAMO Operator shall not be relieved from any liability or obligation under the Contract by any review, approval, authorisation, acknowledgement or the like, by CWC unless and until the same fulfils the requirement under Clause 17.1.

### **17.4 Notices**

17.4.1 All notices under this Contract shall be in writing and shall be served to the respective address and/or e-mail id set out in the Contract. Either Party may from time to time change its address and/or e-mail id number for service herein by giving written notice to the other Party.

17.4.2 Any notice may be served by hand delivery to a Party at its address for service hereunder or by facsimile transmission or by e-mail.

17.4.3 Any notice given by hand delivery shall be deemed to be given at the time of delivery.

17.4.4 Any notice given by facsimile transmission shall be deemed to be given at the time transmission has been confirmed by the sender's fax machine, subject to the following provision. Where said time of transmission falls outside the normal business hours of the recipient, delivery shall be deemed to be given at 10:00hrs (recipient's local time) on the recipient's next following business day.

17.4.5 Any notice served by mail shall be given by registered mail and shall be deemed to be given on the date recorded on the delivery recording sheets by the mail carrier as delivered to and signed for on behalf of the recipient.

### **17.5 Invalidity**

If any provision of this Contract shall be held to be invalid or unenforceable by a judgment or decision of any court of competent jurisdiction or any authority, the same shall be deemed severable and the remainder of this Contract (including the remainder of the affected provision) shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Contract.

### **17.6 Entire Contract**

This Contract contains the entire agreement between the Parties and supersedes any previous understandings, commitments, agreements or representations whatsoever, oral or written, pertaining to the subject matter hereof, provided that nothing in this Clause 17.6 (Entire Contract) shall have effect to exclude or restrict the liability of either Party for fraud or fraudulent misrepresentation.

**17.7 Rights of Third Parties**

Except to the extent of any indemnity or release of liability expressly granted in favour of CWC Group or the SAMO Operator Group, the Parties to this Contract do not intend that any term of this Contract should be enforceable by any third party, whether pursuant to the Contract (Rights of Third Parties) Act 1999 or otherwise. However, for the avoidance of doubt, the Parties may vary or terminate this Contract in accordance with its terms without the prior agreement of any other member of CWC Group or the SAMO Operator Group.

- 17.8 This contract cannot be transferred or sublet to any other party without the written agreement between CWC and the SAMO Operator. SAMO Operator shall not be entitled to, without the prior written permission from CWC, assign or transfer its rights and obligations under the Agreement to any third party or fulfil any of the obligations assumed under this agreement through any other persons; directly or indirectly

The SAMO Operator in no event be entitled to create any security or charge over or otherwise in any manner subject the land and the facilities or any other asset at the premises at ICD Kanpur or any other facilities belonging to CWC for any purpose whatsoever.

- 17.9 SAMO Operator also understands clearly that in case any information furnished to CWC in RFP documents is found to be fake at any stage, their contract shall be liable to be terminated without assigning any reason whatsoever.

**18 GOVERNING LAW AND JURISDICTION****18.1 General**

Subject to Clause 18.2, this Contract shall be interpreted, governed by and construed in accordance with the laws of India (excluding any of its conflict of law rules which would direct or refer to the laws of another jurisdiction) for the time being in force and shall be subject to the exclusive jurisdiction of the courts at New Delhi.

**18.2 Dispute Resolution**

- (i) Any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to the Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in **sub-clause (ii) below**.
- (ii) A Joint Committee with equal number of representative (those not directly involved in the day-to-day business operations of either party at the Facility) from CWC and M/s.....the (Name of the ABC) shall be constituted for the administration of agreement. Any disputes arising out of the implementation of the agreement shall be looked into by this Joint Committee for Resolution.

The Joint Committee comprising three authorized representatives including concerned Regional Manager of CWC and equal number of authorized representatives of M/s..... (name of the ABC) concerned shall be authorized, after going into all pros and cons without jeopardizing the financial interest of CWC, as contained in the agreement, to amend the terms and conditions for smooth and hassle-free operation so long as the overall structure of this agreement does not change.

- (iii) In the event of any Dispute between the parties not getting resolved unanimously by the Joint Committee, any of the Parties may require such Dispute to be referred to a two-Member High-Level Committee comprising of the Managing Director of CWC and the Chairman of the ABC (or such persons nominated by them) for amicable settlement. Upon such reference, the said two persons shall meet not later than 7 days of the date of such request, to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 days of such meeting between the said two persons, either party may refer the dispute to arbitration.

### 18.3 **ARBITRATION:**

- (i) Any dispute which is not resolved by Amicable Resolution as mentioned above, shall be referred to Arbitration which shall be according to the Indian Arbitration and Conciliation Act, 1996 as amended from time to time.
- (ii) Any Party desirous of initiating arbitration shall give 15 days' notice to the other party of its intention ("Arbitration Notice"). Each Party shall, within 15 days of the receipt of the Arbitration Notice, appoint an arbitrator of its choice. Within 15 days of their appointment, the two arbitrators shall appoint a third arbitrator who shall preside over the arbitration proceedings.
- (iii) The venue of arbitration shall be New Delhi, India and all arbitration proceedings shall be conducted in English.

## 19. **Representations and Warranties**

Each Party shall represent and warrant to the other Party that:

- i. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation/establishment;
- ii. It has full power and authority to execute, deliver and perform its obligations under the Agreement;
- iii. It has taken all necessary action to authorize the execution, delivery and performance of the Agreement;
- iv. The Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof; and,
- v. There are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal, which might materially and adversely affect its ability to meet or perform any of its obligations under the Agreement.

**SCHEDULE II****SCOPE OF SERVICES/WORK****1. Introduction****1.1 Introduction to the “Facility” at ICD, Kanpur and scope of further development of the same**

The Facility within ICD, Kanpur have been developed and are owned by CWC and is being offered on “as is where is” basis only. The SAMO Operator shall enjoy the right of permissible use and secure commercial benefit by providing various Services through such Facility subject to due fulfilment of all obligations under the Contract.

At present, the Facility is being operated as a CONTAINER FREIGHT STATION (“ICD”) for export-import (“EXIM”) operations only. It has road connectivity. Warehouses, aggregating of 2700 SQ MTR storage capacity, 5963 SQ MTR open yard area, office complex, roads for setting up silos, Cold storage, processing units etc. are available.

The Facility can serve as a hub for the distribution of EXIM containers to serve all types of trade & industries. The SAMO Operator may create their storage facility as per their requirement for conducting business like silo for food grain, cement, and liquid cargo for inward and outward movements subject to approval of the CWC based on the plan submitted for approval. They can set up processing and packaging plants to facilitate logistics.

If requested by the bidder, CWC will assist in demarcating the required area and get it de-notified to create such a facility for handling & operating domestic cargo/goods. However, the cost of the same shall be borne by the bidder and no compensation/relaxation of any nature shall be provided in case of any sort of delay. ***All such infrastructure shall be vested/ built in the name of CWC, with exclusive rights to SAMO for operational use of the facility so developed till the contract period or termination of the contract whichever is earlier. Any approval(s) / permission(s) taken from the concerned authorities in relation to any such additional infrastructure created by the SAMO, shall be in the name of CWC.***

Information pertaining to Facility within ICD, Kanpur is also provided under Appendix-2. Notwithstanding anything contained in the Contract, it is acknowledged that the SAMO Operator shall get no exclusive right(s) over areas other than the Facility and/or exclusive right to provided services in area other than in the Facility.

**1.2 Objectives of this Contract**

The objective of this contract is to provide various Services to the Users of the Facility to be provided by the SAMO Operator within the Facility under supervision and monitoring of CWC, shall inter-alia, include the following:

- (i) providing, developing, procuring, constructing additional infrastructure as may be required by the SAMO Operator to provide Services;

- (ii) providing Services including, handling, managing and operation of its own/ affiliates/ third party cargo/containers to and fro the Facility;
- (iii) maintaining or repairing of Facility, including, carrying out periodic necessary and requisite maintenance and repair of the Facility as required by "Good Industry Practice" that the utility of the Facility is maintained without deterioration over the period of this Contract, save for normal wear and tear;
- (iv) Marketing of Facility and Services provided therein, to achieve optimum levels of capacity utilization and offer cost-effective, value-added service to the Users of the Facility.
- (v) handling the import and export cargo, stuffing/ De-stuffing delivery of containers, handling empty containers;
- (vi) Transportation of containers/cargo either to and fro ICD Kanpur.
- (vii) providing storage facility/ warehousing facilities;
- (viii) providing third party logistics services;
- (ix) providing bonded warehouse facilities;
- (x) providing services in respect of survey and inspection of containers;
- (xi) repair, improvise, construct yard for equipment and/or other related equipment;
- (xii) any other container handling and transportation service.
- (xiii) any other related activities which are normally conducted at any ICD except fumigation of Container/Cargo and auction of un-claimed/ un-cleared cargo which shall be carried out by CWC. The fumigation charges shall be to CWC account only. The sale proceeds from un-cleared cargo to Custodian/ CWC account will be shared on 50:50 basis after deduction of all miscellaneous expenses with SAMO. Such sharing of auction sale proceeds in respect of un-cleared/ unclaimed cargo delivered after the exit of SAMO will be dealt as per Clause 14.5.3 of the Schedule-I (Conditions of Contract).
- (xiv) It is stated that complete liability (including any statutory compliance/ return filing/interest / penalty) in relation to deduction of any direct taxes on any income accruing to CWC under this entire arrangement shall be of SAMO operator

## **2. Party's other obligations**

- 2.1 The SAMO Operator will develop the existing warehousing infrastructure as per its requirement at its own cost. Any further development of existing facility may include construction of covered facility and other required installations for handling its own/ affiliates/ third party cargo. The Facility will be developed by the SAMO Operator with required installations for handling cargo in accordance with this Contract and the SAMO Operator shall enjoy the right to use for the operation as specified in this Contract subject to due fulfillment of all obligations under this Contract.
- 2.2 SAMO Operator shall be entitled to market the Facilities to interested parties/Users provided, however, that the SAMO Operator shall always transact all such business with any person/entity including, its related and associated companies on "arms-length basis" and in accordance with "good industry practice";
- 2.4 The tariff/ charges for the provision of Services shall be fixed by the SAMO Operator however, shall be published by CWC under CWC's name. Such charges for Services to be levied upon all the Users shall at all times be competitive/ market driven so as to attract maximum possible clientele/Users. The SAMO Operator undertakes not show any undue

preference to any person/entity by charging lesser amount than the published tariff/charges.

- 2.5 The SAMO Operator shall frame and implement procedures for operation and provision of Services under supervision and monitoring of CWC
- 2.6 In case, the SAMO Operator requests for additional construction/modification (including de-notification), it will be done at SAMO Operator's own cost with prior approval of CWC. For this purpose, the SAMO Operator will intimate CWC and submit drawing/design to CWC for its onward submission and approval from concerned authorities, like, Municipal Corporation, etc. However, any delay in getting the required permission from concerned authorities, shall not entitle the SAMO Operator to claim any compensation/damages against the CWC. Except on any of the Facility that is developed further by the SAMO Operator, the SAMO Operator shall not get any exclusive right over the so developed facility by the SAMO Operator. Any Facility developed/ modified by the SAMO Operator shall be transferred to CWC immediately after completion/ termination of agreement on "as is where is" basis.
- 2.7 SAMO Operator may undertake development of Facilities i.e., demolition of existing structures completely or partially, in order to fulfil modern warehousing requirements/customer demands or creation of new Facility like cold storages or temperature-controlled warehouse either by demolishing exiting structures to rearrange/reconstruct the same for optimum utilization of the space as per its handling, management and operation plan under this Contract.
- i. The SAMO Operator shall not be charged any written down value of the present assets, if the present structure/capacity is demolished & re-created with same capacity in form of covered capacity/area (to be re-created as either in form of warehouse / cold /temp.-controlled storages/ Container yard/Paved Area or mix).
  - ii. If complete structures/partial structure are demolished and further facilities/ structures of same capacity are not created at the facility equal to the capacity/area demolished in form of either warehouse/cold/temp.-controlled storages/Container yard/Paved Area or mix), then written down value as per books of account of CWC shall have to be paid by ABC immediately after completion of initial two years of demolition date. In case of demolition of structure with the approval of CWC, the debris/credit items of such demolition shall be auctioned by CWC and full credit value will remain with CWC only. This shall not be adjusted with the amount of WDV to be paid by ABC to CWC.
  - iii. When the SAMO Operator decides to exit and warehousing infrastructure as mentioned herein (equal to the capacity/area demolished in form of either warehouse / cold /temp. controlled storages/ Container yard/Paved Area or mix) is not re-created then the written down value as per books of account of CWC plus cost as decided by CWC which will involve recreation of infrastructure and cost of opportunity lost (@ highest slab of storage charges for Covered Godown/sheds) till the time warehousing infrastructure is ready for use at the facility shall be recovered from the SAMO Operator.
  - iv. Written down value shall not be payable by the SAMO Operator in case of modification of existing facility to meet the need of modern warehousing requirements/ customer demands, without demolition of the existing/original structures.

- v. The SAMO Operator shall handover the facility to CWC at the end of contract period or at the time of exit from the contract, in usable condition, failing which repairing cost as decided by CWC, shall be payable by ABC to CWC.

2.8 The Parties acknowledge that:

- a) The legal and judicial possession of the Facility and remain with CWC;
- b) CWC is the direct lessee of ICD, Kanpur including, the Facility. CWC is not, by virtue of this Contract, is diluting its interest or possession in ICD, Kanpur or the Facility.
- c) CWC was, is and shall always remain the Custodian of the Custom notified Area.
- d) CWC, being custodian, shall be responsible to the Customs and other statutory authorities for loading, unloading and safe custody of import/export goods in ICD as well as transportation of the containers carrying the import/export goods between the port and ICD till the goods are cleared for home consumption/warehoused or transhipped or exported out of India, as the case may be.
- e) CWC shall comply with all the provisions of Section 45 of the Customs Act, 1962 as well as Rules and Regulations and instructions issued by the Central Board of Excise and Customs and the jurisdictional Commissioner of Customs and for that purpose, CWC shall execute Custodian-cum-Carrier Bond in favour of the President of India with or without security or bank guarantee as the Customs direct and keep the same alive from time to time.
- f) The SAMO Operator shall arrange for necessary permissions for construction of warehouses or other structures as required from authorities concerned. The SAMO Operator shall pursue concerned authorities for receiving such approvals in the name of CWC for expediting project; cost of the same shall be borne by the SAMO Operator. CWC shall facilitate in the process of obtaining such approvals. However, any delay in getting such approval, shall not entitle the SAMO Operator to claim any compensation/damages against the Corporation.
- g) The SAMO Operator will ensure providing Electronic Toll Tags for all vehicles engaged by him for transportation of EXIM cargo.
- h) At the awarded facility to the SAMO Operator within ICD, Kanpur, there is some pre-installed Infrastructure installed by CWC to meet the requirements of customs. The same will be made available to the SAMO Operator on "as is where is" basis. The infrastructure mainly comprises of Computer H/W infrastructure which are utilized in EDI connectivity, CCTV Cameras, Fire Fighting Extinguishers etc. Its maintenance and replacement, if required, will be the responsibility of the SAMO Operator.
- i) This Contract is not an offer by CWC to sell its assets and Facility in ICD, Kanpur but is a contract for the SAMO Operator to utilize the Facility for commercial benefits of both the parties.
- j) It would be a liability of the SAMO Operator, at its own cost, to make arrangements, including:
- On Site Facility Management of Application Software for carrying out ICD operations and developing facility of e-invoicing, e-payment and e-trade to users;
  - MPLS connectivity as per Customs requirement for connecting to ICES 1.5 systems;
  - Dedicated Internet lease line connectivity to ICES 1.5 systems;



- On Site Maintenance Engineer for IT infrastructure provided to Customs for connecting to ICES I.5 systems as per Customs requirement.
- Comprehensive AM Contract for CCTV surveillance system having provision to give feed of the CCTV to Customs official through web.
- Cleaning/ Up keep maintenance contract (for office/premises)
- Running of Canteen contract as per Customs requirement.
- Maintenance of Fire extinguishing equipment and fire hydrant system
- Maintenance of Message exchange with Customs ICEA I.5 system
- Web based Container Tracking Portal with its due access to Customs over web and with GPS tracking system
- Maintenance/Development of ICD-Kanpur website reflecting Tariff and other information to trade having e-filing system.
- Bio-metric system for CHAs as per Customs requirement
- Developing and maintenance of connectivity to PCS (Port Community Systems)
- Any other arrangement as may be required by any statutory authority during the Primary Term of this Contract.

k) The minimum essential repair schedule to be undertaken by SAMO Operator shall include:

- i. Drainage Clearance: Once in a year before the onset of monsoon, and/or as and when required;
- ii. Boundary Wall: Clearing of creepers/wild vegetation on and around as and/or when required;
- iii. White Wash/Color Wash of assets/painting of gates, boards, shutters, stack lines twice in five years.
- iv. CWC/Customs boards shall be installed, painted & maintained as per schedule at (iii) above or whenever updation to display information is required.
- v. Roof and Floor of Godowns and/or any part of the Facility or areas handed over to the SAMO Operator: As and when required.
- vi. Damage to CWC Property: to be restored immediately.

2.9 CWC, being the owner of the facility and Custodian of ICD, Kanpur , therefore, contracts such as for MPLS (Multi-Protocol Label Switching) and dedicated leased line connectivity for functioning of ICS 1.5 EDI (Electronic Data Interchange), web-check-in connectivity with port, onsite facility management shall necessarily be in the name of CWC. In addition, registrations under SCMTR and MFTP, or any such platforms/ domains in future, as per the requirement of Customs shall continue to remain in the name of CWC.

2.10 It is explicitly understood and agreed that CWC being the owner of the facility, shall have the right to make business proposals to the SAMO Operator who shall agree to such proposal as long as same is commercially viable.

#### 2.11 **Software Integration with Tally ERP**

- i. The SAMO operator shall be responsible to use the software to automate the internal operations including the invoice generation & receipt of payment.

ii. Billing/Invoicing Software as developed and provided by CWC shall be used for the said purpose. However, in order to use CWC's software, the SAMO operator shall be liable to pay monthly charges for support, hosting & maintenance on mutually agreed rates. CWC shall provide the contact details of the vendor providing hosting, maintenance & support to CWC. In case, of any customization in the software, the SAMO operator shall be liable to bear the charges.

iii. Integration of SAMO software with Tally-ERP: CWC is operating Tally-ERP on a central public cloud server. The software which shall be used at SAMO shall be required to be integrated with CWC's Software's including Tally-ERP. The SAMO shall ensure to provide necessary support (development & integration of APIs, development of necessary reports in software etc.) in order to carry out the integration.

iv. The SAMO operator shall be responsible to carry out security audit of the software being used by them. The security audit shall be carried out by CERTIN empanelled agency only. The SAMO operator shall be required to submit the fresh audit certificate every year. The charges for security audit are to borne by SAMO operator.

v. The SAMO operator's software must comply to all the statutory / non-statutory requirements for operation of the ICD/ ICD. For e.g., e-Invoicing, SCMTR etc.

### 3.0 **Conflict of Interest**

3.1 The existing other business operations of the SAMO Operator should not be in conflict with the requirement of CWC to ensure maximum utilization of the Facility and maximum commercial benefits. It is also acknowledged by the SAMO Operator that the Facility cannot be used for any purpose(s) which is/are conflicting with the interest(s) of CWC.

3.2 In the event the SAMO Operator falls under any of the following categories, the Bidder is required to indicate his plans to ensure that the interest of CWC and/or the interests of third-party Users are not compromised by the SAMO Operator's business operations in the Facility. CWC shall have exclusive right to accept/reject the plans submitted by the SAMO Operator during the Primary Term.

- Where the SAMO Operator is also a proposed user of the Facility;

**OR**

- Where the SAMO Operator runs a parallel facility/offers similar services in the region;

**OR**

- Where the SAMO Operator has interests that may exclude or discourage certain customers or Users from the facility.

**OR**

- Where the SAMO Operator is engaged in developing an ICD to offers similar services in the region.

**SCHEDULE III****COMPENSATION SCHEDULE**

1.0 In consideration of CWC allowing the SAMO Operator to provide Services at ICD, Kanpur and to use the Facility for commercial purposes as detailed in Schedule-II (Scope of Services), the following amounts (excluding GST or any other tax/ cess/ levy by any statutory authority) shall stand guaranteed by the SAMO Operator to CWC:

- (i) a Fixed Lump-sum Amount of Rs. \_\_\_\_\_ p.a.; and
- (ii) a Variable Amount equivalent to **Rs. ....** per TEU payable for Minimum Guaranteed Throughout (“MGT”) of ..... TEUs or “**Actual Number of EXIM TEUs**” (whichever is higher); and
- (iii) **5% of Total Turnover** as Revenue Share generated through operations from the Facility.

**Note:** The Variable Amount / Fee shall be monitor on pro-rata basis of MGT vis-à-vis- Actual TEUs handled, on monthly basis as per the Agreement. The differential amount between the actual payment made and the pro-rata MGT for every month, if any, will be adjusted from payable amount in the ensuing month. At the end of every Financial Year, final reconciliation will be carried out by CWC. The SAMO will be liable to pay the differential towards shortfall, if any, within the stipulated time under the Payment Receipt and Disbursal clause, or the subject differential amount will be adjusted by CWC from the amount available with CWC.

The consideration shall be payable by SAMO to CWC on a monthly basis.

1.1 For the purpose of counting of **Actual Number of EXIM TEUs** for throughput:

- (i) (a) the container entering in as loaded and going out as empty; (b) the container entering in as empty and going out as loaded; (c) container entering in as empty and going out as empty, will be counted once and variable amount shall be payable for the same;
- (ii) For the container(s) entering the Facility in loaded status and also leaving the Facility in loaded status, the per TEU fee shall be payable twice i.e., upon entering and then upon exit.
- (iii) the container entering in as loaded and going out as loaded for Factory De-stuffing (FDS), Export Buffer, On-Wheel, Back to Port container will be counted once, however, the container entering in as loaded with import cargo and going out as loaded with export cargo/hub cargo (or vice versa) will be counted twice for the purpose of computation of TEUs for throughput and payment of Variable Amount.

- (iv) the containers against which the Variable Fee has been paid at the time of entry into the facility and which leave the facility after completion of entire chain of operations but are required to be moved into the facility again for any non-transactional purpose or as per Customs requirement shall not be counted for the purpose of throughput and shall not be charged twice. This, however, shall not include containers which are moved in/out specifically at the request of the importer/ exporter/ CHA or Shipping line concerned.

## 1.2 Total Turnover shall mean:

The aggregate of all revenue from the Handling, management and operations in the Facility at ICD, Kanpur and shall include:

- a) All the revenue earned from handling and movement of containers to and fro ICD, Kanpur ;
- b) All the revenue earned from handling of any cargo other than container;
- c) Shifting of containers from one yard to another within the Facility/ICD, Kanpur for Customs' inspection or any other purpose and/or subsequent loading for delivery including, Services at the Facility;
- d) Additional charges per day for electricity consumption and monitoring reefer containers;
- e) Additional service charges for stacking containers for Customs examination or for any other purpose by prior arrangement;
- f) Income from dwell time/ storage charges from cargo/container.
- g) Storage charges on un-cleared cargo;
- h) Surplus, if any from sale of un-claimed/long-standing/time-barred goods after deducting all the costs, expenses, taxes, duties and other payables with regards to such goods;
- i) Charges for miscellaneous services rendered to customers/ Users viz. third party logistics, repair, cleaning, office space and renting etc.;
- j) Any adjustments for the Gross Revenue from the operations for the previous month/months; and
- k) All other charges not specified above, if any, for handling containers/cargo within/from the ICD.
- l) Any income earned by ABC from the activities carried out in the area de-notified at the request of ABC and any facility created by ABC within the premises of CWC.
- m) Expenditure, of whatsoever nature, incurred by ABC shall not be appropriated/deducted from the Total Turnover; and
- n) Any other income earned by the SAMO Operator not specified above and directly attributable to the Facility or income earned from other activities performed or to be carried out in future within the Facility provided under this Contract including, income generated from additional warehousing space created in form of silo, cold storage etc.

**Explanation:** For the removal of doubts, it is clarified that any amount charged by ABC to the users in relation to the ICD-Kanpur, whether or not such revenue is actually realized from the users, shall form part of the Total Turnover.

Provided however that any income earned from the following activities shall be excluded from the computation of Total Turnover:

- i. income from investing surplus funds by SAMO Operator;
- ii. any expenditure of whatsoever nature, incurred by the SAMO Operator in the Facility;
- iii. income from any other investments not directly related to the Facility;
- iv. fumigation charges collected by CWC from Users;
- v. Benefits available under the Service Exports from India Scheme (SEIS) under the Foreign Trade Policy or any other similar scheme, which shall be availed exclusively by CWC.

- vi. taxes or charges as may be paid by the Users of the Facility to CWC for onward payment to concerned statutory authorities.

Provided also that notwithstanding anything contained in this Agreement the Total turnover shall not include taxes or charges collected by ABC from the users of the services and paid or remitted to the authorities concerned.

- 1.3 The parties acknowledge and accept that the intention of the agreement is that the consideration amount payable to CWC under clauses 1.0 (i), (ii) and (iii) should be calculated in a manner that CWC shall have the net revenue from the agreement after deduction of all such outgoings equivalent to the aggregate of those under clauses 1.0 (i), (ii) and (iii). Accordingly, the parties agree that in the event any such outgoing is assessed as the liability of CWC by any authority the amount payable to CWC under clauses 1.0 (i), (ii) and (iii) shall be appropriately grossed up to ensure that CWC recovers the amount mentioned in clauses 1.0 (i), (ii) and (iii) net of all such outgoings.

## 2.0 Escalation of Fixed Lump-sum Amount and Variable Amount

- 2.1 The above Fixed Lump-sum Amount and Variable Amount shall be subject to annual escalation (per annum) on compoundable basis. The first escalation shall be effective after twelve (12) months from the Date of Commencement of Services at the Facility (as defined in Schedule I of the agreement).

- 2.2 Rate of annual escalation shall be computed as per prevailing Consumer Price Index-IW (CPI-IW) and Wholesale Price Index (WPI) in the ratio of 60::40.

## 2.3 Calculation for arriving at Rate of Escalation

**Rate of escalation =  $[(60\% \times ((CPI_n - CPI_b) / CPI_b) \times 100) + (40\% \times ((WPI_n - WPI_b) / WPI_b) \times 100)]$**

Wherein,

- $WPI_n$  is the Wholesale Price Index (All Commodities) for month of January immediately preceding the date of revision; and
- $WPI_b$  is the Wholesale Price Index (All Commodities) for month January of the Financial Year immediately preceding the start of the Base Year
- $CPI_n$  is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for the month of January immediately preceding the date of revision; and
- $CPI_b$  is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for month January immediately preceding the start of the Base Year.

For the first escalation, year of award of this Contract shall be treated as the base year. For all other escalation. Base year shall be treated as the year of previous escalation.

### Example for Calculation of Rate of Escalation

Let us suppose the year of escalation as 2021 therefore 2020 is to be considered as Base Year. Accordingly following parameters are considered for calculation of the rate of annual escalation.

CPI<sub>n</sub>– All India Consumer Price Index for Industrial Workers (Base 2012 =100) for the month of Jan'2021 as 156.3

CPI<sub>b</sub>- All India Consumer Price Index for Industrial Workers (Base 2012 =100) for the month of Jan'2020 as 149.1

WPI<sub>n</sub>- Wholesale Price Index (All Commodities) (Base 2011-12 =100) for the month of Jan'2021 as 126.5

WPI<sub>b</sub>- Wholesale Price Index (All Commodities) (Base 2011-12 =100) for the month of Jan'2020 as 123.4

**Percentage of Rate of Escalation** =  $[60\% * ((156.3-149.1)/149.1) * 100] + [40\% * ((126.5-123.4)/123.4) * 100] = 3.90\%$

### **3.0 Expenses to be incurred by CWC and to be adjusted from receivables:**

- (i) At all given times, CWC shall have the right to maintain necessary no. of people/officials at the ICD, Kanpur to supervise and monitor the operations undertaken at ICD, Kanpur. CWC shall pay the applicable salary to such officials. Expenses made by CWC towards salary of 05 CWC staff/officials shall be adjusted from receivables.
- (ii) CWC shall ensure adequate arrangement for sanitary facilities, water supply, canteen and other allied facilities, for the Customs Officers working in the area.
- (iii) CWC shall arrange round the clock security of the ICD premises by deploying 03 (Three) number of security guards per shift and rest of the deployment of the security shall be arranged by the SAMO Operator as required as per the directions of CWC.
- (iv) Customs Recovery Charges with respect to Customs staff deployed at ICD, Kanpur. CWC will pay the Cost Recovery Charge ("CRC") and other expenses as may be demanded by the Customs in respect of Customs staff posted at ICD, Kanpur.

#### **Exception:**

The Customs' circular on Customs Recovery Charges are available in public domain and at CBITC website.

- (a) If the performance benchmark and conditions for grant of waiver from the payment of CRC has been achieved in each year of the operation by the SAMO Operator, i.e. The SAMO Operator is not at default of any conditions which may otherwise cause non-waiver of CRC by the Customs Authority, then CWC shall bear the CRC and allied cost. CWC shall apply for CRC waiver with the Customs but continue to pay CRC, till waiver is granted by the Customs. CWC will apply for CRC refund and follow up with the Customs.
- (b) CWC shall be responsible for payment of CRC and allied cost pending, if any, for the period beyond the period of operation of this Contract, i.e. pre and post the Primary Term of the Contract.

- (v) CWC shall arrange adequate insurance of all goods including custom duties which are held inside the ICD, against risk of fire, flood, riots and strike, malicious damage, theft, burglary, public liability and other such risks as may be guided by the requirement of the regulations in this regard in consultation with the SAMO Operator. The SAMO Operator shall arrange transit insurance in respect of cargo/ container/ stocks transported by it to and fro ICD, Kanpur to protect the interest of Users, CWC and Customs duty. In the event of any dispute going to court/tribunal/arbitration relating to insurance claim of stock/transit claim during transportation of cargo/container/stocks and claims of any other nature on account of handling within the premises, all expenses including legal fee etc. will be borne by the SAMO Operator.

#### **4. SAMO Operator's obligation to submit data**

- (i) The SAMO Operator undertakes to furnish monthly data (on the last day of the month) in respect of containers/ cargo/ TEUs entering and/or leaving the Facility or being transacted in the Facility which shall be jointly certified by SAMO Operator's representative and CWC's representative for operational matters.
- (ii) Notwithstanding the above, CWC shall be within its right to take recourse to the information maintained by statutory authority(s) in this regard and in case of any discrepancy, the information maintained by statutory authority(s) shall prevail over the information provided by the SAMO Operator.
- (iii) The SAMO Operator shall assist CWC in maintaining proper and fair accounting of all transactions, billings, collections, payments of all revenue and capital expenditure, receipts, assets, inventory, dues outstanding and liabilities, taxes and duties etc. in relation to the Services provided in the Facility at ICD, Kanpur in accordance with applicable Accounting Standards and the statutory provisions of the Companies Act, 2013 and/or other applicable laws and regulations. For the said purpose, the SAMO Operator undertakes to provide any data/ information as may be required by CWC.

#### **5. CWC's other rights and obligations**

- (i) CWC will have exclusive right to carry out fumigation of container/ cargo inside the ICD, Kanpur as per the tariff and retain the amount so realized from Users in this regard. This amount will not be payable to the SAMO Operator.
- (ii) CWC will avail benefit available under the Service Exports from India Scheme (SEIS) under the Foreign Trade Policy or any other similar scheme, exclusively. ABC shall submit disclaimer certificate in this regard along with all requisite documents/details to CWC, as and when required.
- (iii) CWC shall pay taxes to Municipality (Property taxes)/Gram Panchayat/ non-agricultural assessment tax/ service charges, cess etc. as demanded by the concerned authorities from time to time in respect of the Facility/ ICD, Kanpur .
- (iv) CWC shall be responsible to pay towards:
- Insurance of building/ Godowns;
  - Statutory levies in respect of land within ICD, Kanpur ;
  - Annual lease rent or any other Statutory Obligations to Civic Authority;

**APPENDIX- 1****BANK GUARANTEE**

**(To be submitted on non-judicial stamp paper of appropriate value purchased in the name of the issuing Bank)**

This Deed of Guarantee made this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ (Name of Bank)

having its registered office at \_\_\_\_\_ (Place) and one of its local offices at \_\_\_\_\_ (hereinafter referred to as the “**Surety**”), in favour of Central Warehousing CWC, a statutory CWC established under the Central Warehousing CWC Act, 1962, having its Corporate Office at 4/1, Siri Institutional Area, August Kranti Marg, Hauz Khas, New Delhi-110026 (herein after referred to as “**CWC**”).

WHEREAS M/s \_\_\_\_\_ (hereinafter referred to as “**SAMO Operator**”) having its registered office at \_\_\_\_\_ is bound to furnish Performance Guarantee in the form of Bank Guarantee with CWC in connection with the award of a Tender for Strategic Alliance & Management operator (SAMO) at \_\_\_\_\_ (name of the Region)

WHEREAS the SAMO Operator as per Clause No. 8 of the Contract has agreed to furnish a Bank Guarantee for Rs. \_\_\_\_\_ within seven (7) working days from the date of signing of the Contract.

NOW THIS WITNESSETH:

1. That the Surety in consideration of the above Tender made by the Tenderer to CWC hereby undertakes to pay on demand by CWC and without demur and without notice to the SAMO Operator, the said amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_).
2. The Surety agrees that CWC, at its option, shall be entitled to enforce this bank guarantee against the Surety as a principal debtor, in the first instance, without proceeding against the SAMO Operator and notwithstanding any security of other guarantee that CWC may have in relation to the SAMO Operator's liabilities.
3. The Surety guarantee and undertake to pay to CWC within two (2) business days after receipt by CWC, of a demand complying with the requirements of this bank guarantee on first demand in writing any / all moneys to the extent of INR \_\_\_\_\_ ( in words) without any demur, reservation, recourse, contest or protest and without any reference to the SAMO Operator. Any such demand made by Company on the Bank by serving a written notice, shall be conclusive and binding, without any proof whatsoever, as regards to the amount due and payable, notwithstanding any dispute (s) pending before any court, tribunal, arbitrator or any other authority and / or any other matter or thing whatsoever, as Bank's liability under these presents being absolute and unequivocal.
4. For the purposes of Clause 3, “business day” means a day on which commercial banks are open for business in [mention city of the bank branch].
5. This bank guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the SAMO Operator and shall remain valid,



binding and operative against the Surety. The bank guarantee shall not be discharged by any change in Surety's constitution, constitution of CWC or that of the SAMO Operator or change in appropriate laws.

6. The Surety agrees that CWC shall have the fullest liberty without the Surety's consent and without affecting in any manner, Surety's obligations hereunder to vary any of the terms and Conditions of Contract or to extend time for performance of the Contract by the said SAMO Operator and to enforce, or to forebear to enforce any of the terms and conditions relating to the Contract and the Surety shall not be relieved from its liability by reason of any such variation, or extension being granted to the SAMO Operator or any forbearance, act or omission on the part of CWC or any indulgence shown by CWC to the SAMO Operator or any such matter or thing whatsoever which under the Applicable Laws may, but for this provision, have effect of relieving the Bank.
7. The Surety hereby agree and acknowledge that this guarantee is irrevocable and shall remain in full force till it is fully and finally discharged by CWC in writing or [insert date] whichever is later, and all dues of CWC under or by virtue of the Contract have been fully paid and all its claims satisfied or discharged.
8. The Bank also agrees that this bank guarantee shall be governed and construed in accordance with Indian laws and subject to the exclusive jurisdiction of Courts at New Delhi.
9. All charges, fees, commission and other costs shall be to the account of the SAMO Operator. Failure of the SAMO Operator to make such payments shall not in any way affect the Surety's obligation under this bank guarantee and CWC shall be paid the money due to it under this bank guarantee without any deduction.
10. The Surety confirms that this bank guarantee has been issued with observance of appropriate laws of India.
11. Notwithstanding anything contained hereinabove:
  - (i) Surety's liability under this bank guarantee is limited to INR \_\_\_\_\_ (in words) and Bank's guarantee shall remain in force until [insert date].
  - (ii) Any claim under this bank guarantee must be received by Surety before the expiry of this bank guarantee i.e [insert date]. If no such claim has been received by us by the said date, the right of CWC under this bank guarantee will cease.
  - (iii) Any letter from the CWC to the Manager, (Insert Branch name) branch of the Surety, under the seal of CWC shall be deemed to be sufficient and valid demand for payment under this bank guarantee.
  - (iv) The Bank undertakes not to revoke this bank guarantee before the expiry of this bank guarantee including during extension period, if any.

Cover message for this Bank Guarantee has been sent to CWC bankers i. e. ICICI Bank, 9 Phelps Building, Connaught Place, New Delhi, (IFSC Code: ICIC0000007) through Structured Financial Messaging System (SFMS).

In witness whereof, the Surety through its authorized officer has set its hand and stamp on this [insert date] day of [insert month], [insert year] at [insert place of execution].

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(Signature)

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(Signature)

Full name and official address

with bank stamp

Full name and official address

with bank stamp

Attorney as per power of

Attorney No.....

Dated .....

WITNESS No. 1

WITNESS No. 2

**APPENDIX- 2****PROJECT INFORMATION I/R/O ICD-Kanpur**

<b>S.No.</b>	<b>Description</b>	<b>Area in Sq. Mtrs.</b>
<b>1.</b>	<b>Area to be given for SAMO operation :</b>	
	<b>Covered Godown</b>	
	(i) Ground Floor	1350
	(ii) 1 <sup>st</sup> Floor	1350
<b>2</b>	<b>b) Open Container Yard</b>	4593
	<b>c) Operational Open Space</b>	1143.6
<b>3</b>	<b>Other area to be utilised for SAMO arrangement:</b>	
	<b>a) Office building for custom</b>	
	i) G. Floor	41.82
	ii) 1 <sup>st</sup> Floor	25.00
	iii) 2 <sup>nd</sup> Floor	66.82
	<b>b) Gate Cabin</b>	11.00
	<b>c) Scooter stand</b>	8.00
	<b>d) Santri Block</b>	7.50
<b>3</b>	<b>Area to be retained by CWC</b>	
	i. G. Floor	25.00
	ii. 1 <sup>st</sup> Floor	41.82