

AGREEMENT FOR STRATEGIC ALLIANCE RAIL OPERATIONS (SARO)

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

M/s (herein after referred as **'ABC'**) having its registered office at (hereinafter referred to as Which expression shall, unless it be repugnant to the context or meaning therefore, be deemed to mean and include their legal representatives, administrators, heirs, executors, successors and assigns) acting through its of the FIRST PART.

AND

Central Warehousing Corporation, (a Government of India Undertaking) 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) acting through its Managing Director of the SECOND PART.

AND WHEREAS CWC has entered into a Concession Agreement with the Railway Administration, Government of India on 04.01.2007 (hereinafter referred to as the "Master Agreement") to operate Container Trains as Category I operator as defined in the Master Agreement.

AND WHEREAS ABC is in the field of transportation of containers, which has been opened to private sector participation by Indian Railway and/or is in possession of BLC rakes required for movement of rakes.

AND WHEREAS CWC has represented that it is a leading service provider/infrastructural developer carrying on the business of development, operations and management of warehouses, Container Freight Stations/Inland Clearance Depots and logistics provider under a single window concept and it is in the business of Container Train Operations.

NOW WHEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

ARTICLE – 1: DEFINITION AND INTERPRETATION

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. **Agreement** means the Strategic Alliance Rail Operations (SARO) Agreement entered between CWC and ABC along with its accompaniments as amended from time to time.
- ii. **Applicable Laws** means all laws, including rules, directions, guidelines, regulations, and notifications made there under and having the force of law, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect in India during the subsistence of this Agreement.
- iii. **Applicable Permits** means all clearances, permits, authorizations, no objection certificates, consents and approvals exemptions required to be obtained or maintained under Applicable Laws in connection with the performance of this agreement.
- iv. **BLC Rake:** Rake means an undisturbed train formation largely with or without containers including Brake Van. BLC rakes are high speed low belt container flat wagons conforming to RDSO standards/requirement of Indian Railways.
- v. **Brake Van** means a guard's van with brakes and other equipments and attached normally at the end of the train.
- vi. **Category I** means the entire Rail Network in relation to both Exim Traffic and Domestic Traffic.
- vii. **Container** means an article of transport equipment specially designed to facilitate the carriage of goods by one or more modes of transport without intermediate re-loading and handled as unit load.

- viii. **Effective Date** means _____ when this agreement shall be deemed to have become effective.
- ix. **Full Train** means a rake consisting of forty-five BLC wagons or as may be decided by Indian Railways from time to time with Brake Van, excluding Containers.
- x. **Railway Charges** means the total amount charged by Railway for single operation including Rail Haulage, Development Charge, etc., as mentioned in the RR.
- xi. **Rail Haulage/Rail Tariff** means the total haulage charged by Indian Railway as per prevailing tariff dated 31.10.2018 and as amended from time to time.
- xii. **Master agreement** means the Concession Agreement entered into between Central Warehousing Corporation and Railway Administration dated 04.01.2007 for operating container trains on Pan India basis under Category-I.
- xiii. **Railway Receipt (RR)**; The receipt issued by Railway Administration (under section 65 of the Railway ACT, 1989) on acceptance of Goods and which the consignee to take delivery of the goods at the destination Rail terminal
- xiv. **Year** shall mean financial year commencing from 1st April and ending with 31st March.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires;

- a) Reference to any legislation or any provision thereof shall include amendment or re-enactment or consolidation or such legislation or any provision thereof so far as such amendment to any transaction entered into hereunder:
- b) Reference to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or

partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

- c) The table of contents, heading or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not effect, the construction or interpretation of this Agreement;
- d) The words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- e) Any reference to any period of time shall mean a reference to that according to Indian Standard time;
- f) Any reference to day shall mean a reference to a calendar day as per the Gregorian Colander;
- g) Reference to “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in India are generally open for business;
- h) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar provisions and schedules;
- i) Any reference at any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such day or dates; provided that if the last day of any period computed under this Agreement in not a business day, then the period shall run until the end of the next business day;
- j) The word importing singular shall include plural and vice versa;
- k) Reference to any gender shall include the other and the neutral gender;
- l) 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; provided that these Sub-parts shall not operate so as to increase liabilities or obligations of the parties;

- m) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or buy any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such party in this behalf and not otherwise;
- n) Recitals to the Agreement from an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- o) Reference to recitals, articles, clauses, sub-clauses or sub-parts in this Agreement shall, except where the context otherwise requires, mean reference to Recitals, Articles, Clauses, Sub-clauses and sub-parts of or to this Agreement; and
- p) Any and all capitalized terms used, but not defined, herein shall have the meaning scribed to the term under the Railways Act, if any.

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

ARTICLE – 2: PERIOD OF THIS AGREEMENT

The period of this agreement is for 02 (two) years from the date of commencement of first rake extendable at mutually agreed terms and conditions.

ARTICLE – 3: SCOPE OF WORK

3.1 The scope of work includes movement/transportation of EXIM/Domestic boxes between (Port of Origin) to (Port of Destination) Sector or vice versa, on non-exclusive basis. If ABC desires to operate on more than one route separate agreement shall be executed for each sector. However, agreement for a round trip sector is to be executed at either of two regional offices situated for source and destination.

3.2ABC shall arrange rake/equipments of their own for movement and loading/unloading of the containers from rail rakes both at Origin and Destination. The Terminal Access charges, Terminal Handling Charges and any other such charges shall be borne by the ABC.

3.3 CWC will operate rake on its Category-I CTO License and hence Railway Receipt (RR) will be in the name of CWC.

3.4 The payment towards the rail haulage/rail freight and any other charges payable to Railway and CWC will be debited from a separate bank account to be opened by CWC. ABC shall deposit twice the amount of expected Rail Freight in said bank account in advance so that the requisite payments are made from the bank account to avoid any penalty from Indian Railway. CWC will provide view rights of above bank account to ABC so that all transactions may be monitored. Any amount receivable by CWC under this agreement would also be adjusted from the said bank account.

3.5 The party will be responsible for all the damages/ penalty as charged by the Railway arising out of such operations and all railway charges will be borne by the party. All Charges such as shunting charges, stabling charges, siding charges, brake van charges and any other charges/surcharges as levied by Indian railway to CWC for such arrangement will be borne by ABC on actual basis. These damages/penalty as charged by Railway shall be adjusted from the bank account as mentioned above.

3.6 ABC shall be responsible for ensuring that all operations including handling for full train with brake van provided/positioned by them which is as per RDSO standards/requirement of the Indian Railway either prescribed under the master agreement or under any applicable law are any other standard/rules.

3.7 ABC shall provide weekly report to concerned regional office and corporate office for movement of rake including container number, tare weight, gross weight and copy of RR for computation purpose. ABC shall reconcile all the data related to Train information bill on monthly basis with CWC.

3.8 As mentioned above at S. No. 3.4, ABC shall deposit twice the amount of expected Rail Freight in advance in CWC account and will be responsible for any demurrage/penalty by Indian Railway. Further as per GST law, it will be considered an Advance Receipt and concerned regional office shall issue an Advance receipt against the same and discharge liability. The same shall be adjusted at the time of raising the Invoice on ABC.

3.9 Any liability of Railway or any other parties and the amount payable to CWC will be adjusted from said account and ABC shall recoup the fund to the said

account. Further any liability of Railway due to non-availability of fund in the said account will also be borne by ABC.

3.10 ABC shall provide all relevant data and information to FOIS through as on online, in accordance with Master agreement and if CWC shall maintain FOIS as TMC then whatsoever the expense arises out from such arrangement will be borne by party as per actuals. ABC maintain up to date and complete records relating to containers train operations.

3.11 ABC make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its contractor.

3.12 ABC will settle at its cost and expenses all the claims arising out of traffic booked by CWC.

3.13 ABC shall ensure that rail terminal either at Origin or Destination must be accepted to be accessed by the Terminal operator prior to dispatch of trains to avoid any claim from Railway.

3.14 ABC shall maintain accurate, up to date and complete records related to container train operations and shall provide this information along with other data as mentioned in clause 3.7 above to CWC concerned regional office.

3.15 ABC shall do all such other acts, deeds and things as are necessary or incidental to the performance as obligated under the agreement.

3.16 It shall be ensured by ABC that the BLC/BLCM/BLSS rakes should conform to the specification and requirement of Indian railway. The container train shall move under the flag of CWC. The normal repair and maintenance expenditure charged by railways as part of haulage charges shall be borne and reimbursed by ABC. In case any other special repair and maintenance arising out of defects/warrantees of BLC rakes etc. is to be undertaken, the same shall be on account of ABC.

3.17 ABC further undertakes that to provide fit to run certificate from Railway Authority for rakes provided to CWC for movement of Containers trains from origin to destination. CWC has first right of refusal to the SARO operator for the availment of services for the terminal where CWC has facilities for handling and other allied services on published tariff for destination and originating stations other than his own terminals. ABC shall give first preference to use CWC

terminals (ICD/CFS/PFT). The same shall be decided and agreed upon before entering into this agreement.

3.18 ABC further agree and undertakes that any wagons or its parts which are safety related, shall be subjected to inspection by RDSO or its authorised inspecting agency for which ABC shall pay due charges for such inspection, design etc to Indian Railway or its authorised agencies. The Railway Administration may from time to time modify the maintenance schedules and corresponding timelines which shall be undertaken by ABC.

3.19. The Parties hereby agree that in the event any infrastructural, technological and/or procedural changes are envisaged on Railway Administration's Rail system then ABC and CWC shall meet, in good faith, to review the terms and condition of this agreement so as to give effect to any such change.

3.20 ABC undertakes to comply with the provisions of Master Agreement applicable/incidental to the said operations.

3.21 This agreement doesn't provide any exclusivity to the ABC for movement on agreed sector and CWC retains the exclusive rights to have multiple such arrangement on any Sector including the one covered under this agreement.

ARTICLE – 4: PAYMENTS

4.1 ABC shall pay fixed fee of Rupees 50,000/-* (Rs. Fifty Thousand only) per rake (per trip one way) as Fixed fee for each sector (origin to Destination is one sector) on **the basis of GST complaint invoice raised by concerned Regional Office of CWC**. Fixed fee payable by ABC is subject to annual escalation of 6% per annum on anniversary of agreement. In addition to fixed fee, Supervision charges @ 2% (two percent) of Railway Charges as debited to CWC account by Indian Railway based on Railway Receipt (RR) shall be paid by ABC for each sector. The Railway charges shall include Brake Van, Development Charges etc. as mentioned in Railway Receipt (RR).

Note: In case, the EXIM containers/cargo is to be moved on CWC's Carrier/Custodian for in addition to the above, additional supervision charges @ 3% shall be payable to CWC. Also, ABC has to sign as Surety for Central Warehousing Corporation of the continuity bond to be executed with Customs for transportation of containers by rail.

***Fixed fee applicable for F.Y. 2022-23.**

4.2 Terminal Access Charges and Terminal Handling Charges will be borne by ABC for handling and other operations.

4.3 Rail haulage/rail freight shall be deposited in advance as mentioned in Clause 3.4 above.

4.4 All other charges levied by the Railways such as shunting, siding, stabling charges, cost to railway staff, etc. will be borne by ABC and adjusted by CWC on actual basis from the advance amount deposited by ABC. ABC shall indemnify CWC against all charges/claim/liabilities levied/imposed by Indian Railway & Customs to CWC for this arrangement.

4.5 All other taxes/levies/fee/charges payable to any government body/anybody in respect of movement/transportation of EXIM boxes from origin to destination will be paid/borne by the ABC and no claim whatsoever shall lie against the CWC on this account.

4.6 Insurance of BLC rake along with the container cargo shall be undertaken by ABC at their own cost and CWC shall not be responsible for any loss/damage arising out of any accident due to movement, loading/unloading/natural risk. A copy of Insurance policy is to be submitted to CWC.

4.7 The haulage charges and other operational charges/expenses will be paid by CWC to Indian Railway from the concerned Regional Office of CWC and adjusted by CWC on actual basis from the advance amount deposited by ABC.

4.8 Concerned CWC Regional Office shall raise Invoice/bill to ABC as mentioned at clause no 4.1 with GST on receipt of RR and the amount payable by ABC shall be realized from the bank account opened for payment of freight immediately. For Example, if rakes moved from Kolkata to JNPT then regional office Kolkata will raise the invoice/bill to ABC along with applicable GST and for vice versa Regional Office Mumbai will raise the bill/invoice with GST to ABC.

4.9 ABC shall recoup all payments of previous rake/s, not only limited to 2% supervision charges but all charges pertaining to rake/s before placing indent for fresh rake/s. If ABC fails to do so then CWC shall not undertake any formalities for booking of next rake/s.

4.10 ABC shall be responsible for all the claims of Railways for these operations as mentioned above for the duration of the contract and will be raised by CWC on receipt of actual demand by the Railways even after expiry of the contract period. Further ABC shall submit Bank Guarantee of Rs. 20 (Twenty) Lakh to CWC as security deposit. CWC shall encash the bank guarantee submitted by ABC for any failure to comply with the clauses under this agreement or to realize any amount due to CWC from ABC. Further if Bank guarantee is encashed, GST @18%, shall be additionally recovered on the account of Bank Guarantee.

4.11 The invoice with respect to Railway Claims like Haulage, Brake Van, Development charges, Stabling, shunting, siding charges etc. shall be in the name of CWC, Concerned Regional Office of CWC shall claim the reimbursement of the above claims from the ABC by way of issuance of an invoice along with applicable GST and adjust the amount applicable from the available amount in bank account as mentioned in Clause 3.4

4.12 ABC shall indemnify CWC for any Tax demand and interest and/or penalty thereon arising due to negligence / fault.

4.13 Taxes and Government levies will be paid extra as applicable.

ARTICLE – 5: VALIDITY

Terms of Agreement and validity of rates will remain applicable during the period of agreement i.e., ---- years from the date of signing of this Agreement and as amended/extended as per the provision of the agreement.

ARTICLE – 6: EXIT CLAUSE

Either party may take exit from this Agreement during its currency by serving 3 months written notice to the other party.

ARTICLE – 7 (A): DISPUTE RESOLUTION

7.1 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 clause 7.2 below.

7.2 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 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 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.

ARTICLE – 7 (B): 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

EXPLANATION:

For the purpose of this Clause, the expression '**Managing Director**' shall include any officer for the time being performing the duties of the Managing Director of the Central Warehousing Corporation, New Delhi.

In witness there of the parties here to have set their hands this ____ day of _____, _____ in presence of below mentioned.

For and on behalf of
Central Warehousing Corporation

For and on behalf of
ABC.

Witness

Witness

1.

1.

2.

2.