**OFFICE OF THE OFFICIAL LIQUIDATOR,HIGH COURT OF GUJARAT, AHMEDABAD.**

**Ref.:OL/Estt./ /2010 Date : \_\_.10.2010**

**SCHEME FOR THE APPOINTMENT, SELECTION AND EMPANELMENT OF THE SECURITY AGENCIES, 2010-11. AS SANCTIONED & APPROVED BY THE HON’BLE HIGH COURT OF GUJARAT VIDE ODER DATED 25.10.2010 PASSED IN OFFICIAL LIQUIDATOR’S REPORT NO. 87 OF 2010**

In exercise of the powers conferred under sub-Section 3 of Section 457 read with the clause (d) of sub-section (1) of Section 457 of the Companies Act, 1956, the Company Court, the Hon’ble High Court of Gujarat, approves the following Scheme for the appointment, selection and empanelment of Security Agencies by the Official Liquidator, namely :

1. **SHORT TITLE AND COMMENCEMENT :**

(a) This Scheme may be called the “Scheme for the Appointment, Selection and Empanelment of the Security Agencies, 2010-11.”

(b) This Scheme shall come into force from the date it is approved or notified by the Company Court.

1. **PURPOSE OF THE SCHEME :**

The purpose of the Scheme is to lay down the process in general for the selection and appointment of the Security Agencies for providing security to the properties of the Companies (in liquidation).

1. **DEFINITIONS :**
2. **“Company (in liquidation**)” means a company against which petition has been filed for liquidation and the orders have been passed by the Company Court for its liquidation in exercise of powers conferred by Section 443 & 444 of the Companies Act, 1956.
3. **“Company (in Liquidation) Fund”** means the fund maintained in the Companies Cash Book as per the Rule 286 of the Companies (Court) Rules, 1959.
4. **“Company Court”** means the Bench of the High Court of Gujarat, constituted to deal with winding up proceedings, compulsory liquidation of the Companies and all such matters referred to in the Act.
5. **“Official Liquidator”** means liquidator appointed under Section 448 of the Companies Act, 1956 and attached to the Company Court.
6. **“Tender”** means a tender notice issued by the Official Liquidator for inviting bids for empanelling the Security Agencies, for providing security cover to the properties of the Companies (in liquidation)
7. **“Security Agency”** means a firm or a concern or company which professes to provide security cover to the industrial units and other establishments and has the infrastructure and the capacity to provide such services.
8. **“Empanelled Security Agency”** means a Security Agency which has been empanelled in accordance with the provisions of this Scheme.
9. **PUBLICATION OF TENDER :**

The Official Liquidator shall publish a Tender Notice in two or more National English Dailies and a Gujarati Daily having circulation in Gujarat and other neighboring States, inviting the Security Agencies to apply for being empanelled as a Security Agency to provide security cover to the properties of the Companies (in Liquidation).

1. **FORM OF TENDER NOTICE AND CONDITIONS FOR EMPANELLING SECURITY AGENCIES :**

The tender for empanelling Security Agencies shall be published in such form, lying down such terms and conditions as may be approved by the Company Court.

1. **PERIOD FOR PANEL OF THE SECURITY AGENCY :**

A panel for engaging a Security Agency, once constituted, shall be available for two years from the date of its approval by the Company Court or for the period as may be directed by the Company Court.

1. **COMMITTEE FOR EMPANELING THE SECURITY AGENCY :**

On receipt of the tenders from the Security Agencies in terms of the notice for inviting tenders for the empanelment of Security Agencies, the Company Court shall constitute a committee of the following members for recommending the panel of Security Agencies.

(a) Official Liquidator

(b) Any person having the experience and the expertise in the issues relating to providing security to the industrial units and other establishment; and

(c) Two other members nominated by the Company

 Court.

1. **CONSIDERING FOR THE EMPANELING OF THE SECURITY AGENCIES :**

The Committee shall at the time of making the recommendation for the empanelment of Security Agencies shall take into consideration such factors as may be considered relevant including:

(a) The past record of the Security Agency;

(b) The capacity for providing the service;

(c) Willingness to abide by the terms and conditions laid by the Company Court or the Official Liquidator for providing the security cover.

(d) Compensation at which Security Agency is willing to provide the service; and

(e) License under “The Private Security Agencies (Regulations) Act, 2005.

1. **EMPANELING OF THE SECURITY AGENCIES :**

The Company Court after considering the recommendations of the Committee may accept its recommendations and direct the empanelment of the Security Agencies so recommended or pass such orders as it may consider appropriate.

1. **EMPANELING DOES NOT MEAN THE AWARDING OF CONTRACT OF PROVIDING SERVICE :**

Empanelment of a Security Agency does not guarantee awarding of contract, in all cases, to such a Security Agency for providing security cover to the properties of the “Companies (in Liquidation)”.

1. **INTER-SE BIDDING OF THE EMPANELED SECURITY AGENCIES BEFORE AWARDING A CONTRACT AMONG THE SECURITY AGENCIES ON PANEL :**

Whenever the question of providing security cover will come up for consideration for any property or properties of a Company (in Liquidation) may invite the Empanelled Security Agencies for inter-se bidding in the Court or constitute a Committee for this purpose. The Company Court may after making such entries as may be considered appropriate and taking in to account the result of the inter-se bidding among the Empanelled Security Agencies, direct the Official Liquidator to award contract to one or more Empanelled Security Agencies.

1. **CONTRACT FOR THE ENGAGEMENT OF SECURITY AGENCY:**

The Security Agency or Agencies selected for awarding the contract shall enter into an agreement with the Official Liquidator in the Form A as appended with this Scheme.

1. **THE TERMS OF THE CONTRACT TO BE NON-NEGOTIABLE :**

The terms of contract as stated in the Form A, shall be non-negotiable except for the amount of Bank Guarantee which may be asked to be furnished by the Company Court or the Official Liquidator.

1. **SECURITY AGENCY TO FOLLOW THE GUIDELINES AND THE DIRECTIVES ISSUED FROM TIME TO TIME. :**

A Security Agency engaged in accordance with this Scheme shall also be bound to carry out the instruction or directives which may be issued by the Company Court from time to time concerning the security of the properties of the Companies (in liquidation).

1. **PAYMENT TO THE SECURITY AGENCY SELECTED FOR PROVIDING SECURITY COVER:**

The Security Agency selected for providing security to a Company (in Liquidation) shall be paid from the “Company (in Liquidation) Fund” in the first instance and in case the funds are insufficient to make such payment, the payment shall be made by the creditors of the Company (in Liqn.) in the manner as may be directed by the Company Court.

1. **FORMS OF REGISTERED TO BE MAINTAINED :**

The Official Liquidator may prescribe the Forms of the Registers to be maintained by a Security Agency selected for providing security cover to a Company (in liquidation), for keeping the record of the Security guards and any other matter relating to providing security to the premises or the property of the Company (in liquidation).

1. **THE COMPANY COURT MAY MAKE A DEPARTURE FROM THE SCHEME, IF THE EXIGENCIES SO DEMAND :**

The Company Court, if the exigencies so demand may make a departure from this Scheme for the empanelling of Security Agencies and the matters incidental to it.

1. **REMOVAL OF A SECURITY AGENCY FROM THE PANEL :**

(a)The Official Liquidator may recommend the removal of an empanelled Security Agency from the panel, where:

**(**i) Such Security Agency was found to be involved in any corrupt practice in conducting its business;

(ii) Security guards employed by it are frequently found to be involved in the commission of thefts or pilferages of the property of the Company (in Liquidation);

(iii) In the opinion of the Official Liquidator it would not be safe to engage such a Security Agency for providing security cover to the properties of the Companies (in Liquidation).

(iv) Security Agency has been declared insolvent or bankrupt;

(v) It is found that the declaration(s) made by the Security Agency at the time of empanelment or submitting tender was not correct;

(vi) It is found that the empanelled Security Agency is no longer in a position to provide the Security services for which it was empanelled;

(b) The Company Court may direct removal of a Security Agency from the panel on the basis of such a recommendation after giving an opportunity of hearing in such form and in the manner it may consider appropriate before or after permitting its removal.

1. **RESOLUTION OF DISPUTES BETWEEN THE SECURITY AGENCY AND THE OFFICIAL LIQUIDATOR :**

In case of any dispute as to the terms of the agreement arrived between a Security Agency and the Official Liquidator, the same shall be referred to the Company Court and the decision of the Company Court shall be binding on both the parties. The Company Court may, if it consider appropriate, refer such a dispute between the two for resolution to any of the modes of alternative resolution of disputes.

1. **POWER TO REMOVE DIFFICULTIES :**

The Company Court may change or amend this Scheme, at any time if it considers so necessary, to remove any difficulty which may arise in the implementation of this Scheme.

1. **INTERPRETATION OF THE SCHEME :**

In case of any question being raised as to the interpretation of this Scheme, the interpretation as given by the Company Court shall be final and binding on all parties.

**OFFICIAL LIQUIDATOR**

**HIGH COURT OF GUJARAT**

**Form “A”**

Agreement between the Official Liquidator and Security Agency for providing security services to the Companies in Liquidation.

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This agreement made at Ahmedabad on this……….day of …………,2010 between the Official Liquidator attached with the Company Court of the Hon’ble High Court of Gujarat, at Ahmedabad having its office at Office of the Official Liquidator, High Court of Gujarat, Jivabhai Chamber, Ashram Road, Ahmedabad (here-in-after referred to as Official Liquidator, which expression shall unless repugnant to the contest or meaning thereof being deemed to be and include its successor) of the first part and M/s. ……………………………………. a concern / firm / company on the panel of the Company Court of the Hon’ble High Court of Gujarat for providing security services for companies in Liquidation having its registered office at ………………………………………… (here-in-after referred to as Security Agency which expression shall unless repugnant to the contest or meaning thereof being deemed to be and include its successor and assigns) of the Second Part.

 Whereas the Official Liquidator desires to employ Security Guards to provide the security covers to the premises of M/s…………………………… Company in Liquidation located at …………………………………, herein after referred to as the “said premises” having ……………. square meters of covered area and ……………. square meters of open area.

 And Whereas the Security Agency, who is experienced in providing services to Industrial Units and other establishments and in on the panel of the Company Court of the Hon’ble High Court of Gujarat to provide such services, has offered to provide security services to the Official Liquidator at the said premises and the Official Liquidator has agreed to avail the said services being provided by the Security Agency.

**NOW THIS AGREEMENT WITHNESSTH AS FOLLOW:--**

1. The Security Agency shall provide ……… numbers of Security Guards to keep ward and watch for the protection of the said premises as per the Official Liquidator’s requirement. The assessment of the Official Liquidator in this respect shall be final. The Security Guards provided by the Security Agency will be for 24 hours in the shift of eight hours for the protection of the said premises round the clock.
2. The Security Agency shall build a temporary structure in the said premises at a place indentified by the Official Liquidator of appropriate size and shape at its own cost for the Security Guards deployed at the said premises from time to time.
3. The Security Agency will maintain such registers and records as may be directed by the Official Liquidator for marking the presence of the Security Guards and also to keep record of vehicles and persons entering or leaving the said premises.
4. The Security Agency at its own expenses shall provide its Security Guards with necessary uniforms , arms , outfits etc. required for the effective discharge of security services to the Official Liquidator in respect of the said premises.
5. At the time of taking over the said property, for providing security, by the Security Agency , the condition of the property shall be noted and an inventory of all properties in the said premises shall be prepared in the presence of the Official Liquidator or his duly authorized representative, representative of Security Agency , any of the Creditors of the Company in Liquidation and the representative of the Company in Liquidation, if available.
6. The Security Agency shall furnish a certificate in respect of every Security Guards deployed in the said premises, stating that they have checked the antecedents of the Security Guards themselves and have also obtained Police Verification Certificate in respect of all the Security Guards deployed and have verified their addresses , telephone numbers and such other references for their identification.
7. The Security Agency shall provide the names , addresses , photographs and other particulars of all the Security Guards deployed at the said premises from time to time, to the Official Liquidator, before their deployment or soon after their deployment.
8. The Security Agency shall ensure that the Security Guards provided by it, while on duty will maintain perfect discipline and behavior and shall neither cause any damage to the property of the Company in Liquidation and the said premises nor commit or permit any pilferage thereof.
9. The Security Agency agrees and undertakes that the security service provided by the Security Guards shall be to the entire satisfaction of the Official Liquidator and Security Agency shall make it clear to Security Guards that they are the employees of the Security Agency and they shall have no claim against the Official Liquidator and the Official Liquidator shall have no liability to pay wages / salaries / compensation or any other statutory benefit(s) to the Security Guards under the Labour Laws and other legislations and the Security Agency shall be responsible for providing said amenities to the employees admissible under the law and other rules and regulations applicable to them.
10. The Security Agency agrees that it shall make available, for inspection, to the Official Liquidator or his representative, all the records with regard to payment of wages, salaries, compensation, any statutory benefits, facilities or amenities required to be provided to the Security Guards under any law, rules and regulations applicable to them.
11. The Security Agency shall forthwith inform the Official Liquidator in case of the removal of any of the Security Guards from its service and deploying of any other Security Guard(s) to replace him. In the case of latter, the Security Agency shall also supply the name, address and photograph of the Security Guard(s) so deployed as a replacement of the Security Guard(s) removed.
12. The Security Agency shall indemnify the employer against any claim or loss caused to the properties of company in liquidation at the said premises due to the willful acts and omission or carelessness or negligence of the Security Guards deployed by the Security Agency while on duty.
13. The Security Agency shall enter into triplicate agreement with the Official Liquidator and the Insurance company and have the property in the said premises insured as against any loss caused to it by theft, fire or any other cause of similar nature, providing inter alia that the premium of the said insurance shall be paid by the Security Agency initially, to be charged later in the bills to be submitted for payment of security charges. The insurance claim, if any, arising out of such loss or damage shall be payable to the Official Liquidator.
14. The Security Agency shall inform the Official Liquidator of any loss or damage caused to the property of Company in Liquidation and the said premises without any delay.

15. The Official Liquidator shall pay a sum of Rupees …………………………. to the Security Agency for the services provided by the Security Agency, after being approved by the Company Court of High Court of Gujarat, on submission of bills in duplicate with a certificate certifying that neither any theft has been committed nor any damage has been caused to the property in the said premises during the period with the attendance report of the Security Guards, by the Security Agency by the tenth day of following month.

16. The Official Liquidator shall try and ensure that the payment is made to Security Agency as early as possible after the submission of the bills.

17. The Security Agency shall furnish a bank guarantee in the sum of Rupees ………………………. In favour of the Official Liquidator for the due performance of this contract. The Official Liquidator shall be at liberty to invoke the said guarantee, subject to the approval of the Company Court of High Court of Gujarat, without any notice to the Security Agency in case any of the terms of this contract are found to have been violated.

18. The Security Agency shall obtain license, if any, required under the provisions of “The Private Security Agencies (Regulation) Act, 2005” and any other license required under the local or central law for providing security service to the Official Liquidator and engaging the Security Guards.

19. The Official Liquidator shall be entitled to supervise the services provided by Security Agency himself or through any of his representative and if Official Liquidator finds that the conduct, behavior and performance on working of any Security Guards is unsatisfactory, it may issue directions to the Security Agency immediately to recall the particular guard and substitute him by another and the Security Agency shall comply with such directions issued by Official Liquidator.

20. The Official Liquidator or any of his duly authorized representatives shall be entitled to inspect the security arrangements at the said premises and also inspect the records maintained at the said premises by the Security Guards and the records maintained elsewhere by the Security Agency in respect of the Security Guards deployed by it.

21. This agreement will be for a period of two years from the date of its execution or till the property of the Company in Liquidation is disposed of, whichever is earlier. The Official Liquidator shall, in the event of breach of any of the terms and conditions of this agreement or if the services provided by the company is generally considered to be unsatisfactory by the Official Liquidator or for any other reason considered by Official Liquidator sufficient to terminate this agreement, may terminate the agreement by giving one month’s notice in writing.

22. In the case of gross violation of any of the terms and conditions of this agreement or where Official Liquidator is of the opinion that it would no longer be safe to continue with the services of Security Agency or a Security Agency has become incapable of rendering the service because of it being declared insolvent or bankrupt, ceasession of its operations, dissolution and such other factors, it may terminate this agreement unilaterally, forthwith. The Official Liquidator shall also be entitled to terminate this contract in terms of the directions issued by the Court, if any, in this respect. The Security Agency shall not be entitled to compensation in case of termination of this agreement for any of the said reasons.

23. The Security Agency may also terminate this agreement by giving four month’s notice to the Official Liquidator.

24. On the expiry of the term of contract or its early termination, as the case may be, the Security Agency and the Security Guards deployed by it shall vacate the said premises without in any way causing or damaging the said premises and the property lying therein.

25. The Security Agency shall keep the Official Liquidator informed of its address and name and addresses of all of its key functionaries.

26. The stamp duty, if any, on this agreement and duplicate shall be borne by the Security Agency. The original shall be retained by the Official Liquidator and the Security Agency shall retain the duplicate.

27. Unless otherwise agreed upon, the respective address of communication with respect to any of the parties shall be as under:

 **For the Official Liquidator –**

 **For the Security Agency –**

28. In case of any dispute or difference arising between the parties under this agreement, the decision of the Company Court of High Court of Gujarat will be final and binding. The Company Court may in its discretion refer any such dispute to be resolved by referring it to any of the modes of Alternative resolution of disputes.

29. All disputes arising out of this agreements or any matter connected there to shall be subjects to the territorial jurisdiction of the Company Court of the Hon’ble High Court Gujarat.

IN WITNESS WHEREOF the parties have put their common seal on this agreement and have signed the same on the day month and year mentioned above.

Signature Signature of the

Official Liquidator / Representative Representative of the Of the Official Liquidator Security Agency

Seal of the Official Liquidator Seal of the Security Agency

1. Witness 2. Witness