

**ANNEXURE IX**

*(To be executed on a stamp paper of requisite value)*

*(This is a standard template. This may be customized on a case to case basis)*

**DEED OF HYPOTHECATION**

**THIS DEED OF HYPOTHECATION (“Deed”)** dated this \_\_\_\_\_ day of \_\_\_\_\_ 2010;

**BY**

\_\_\_\_\_ *[please insert the name of the firm/company/society/trust and address of the registered office]*, (hereinafter referred to as "**Borrower**" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) acting through Mr. [●, *[please insert the name and designation]*], duly authorized vide board resolution dated *[please insert the date]*;

**IN FAVOUR OF**

**National Skill Development Corporation**, a non-profit company, registered under the Companies Act, 1956, licensed under Section 25 of the same and having its registered office at D-4, Clarion Collection, Shaheed Jeet Singh Marg, New Delhi-110016 , (hereinafter referred to as the "**Corporation**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) acting through Mr. [●, *[please insert the name and designation]*], duly authorized vide board resolution dated *[please insert the date]*;

The Borrower and the Corporation are hereinafter individually referred to as "**Party**" and collectively as "**Parties**".

**WHEREAS:**

- (A) The Corporation has provided/has agreed to provide to the Borrower, a Rupee loan aggregating to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) (hereinafter collectively referred to as "**the Assistance**") inter alia on the terms and conditions contained in the [.] Agreement dated \_\_\_\_\_ *[please*

*fill in the name of the agreement entered into between the Parties]* (hereinafter referred to as the "**Agreement**") executed between the Borrower and the Corporation;

- (B) In terms of the Agreement, all obligations of the Borrower (whether financial, performance or otherwise) under the Agreement and/or any other Facility Agreements, including, without limitation, the payment of Repayment Installments, interest, fees, damages, reimbursements or otherwise together with all interest, costs, charges, expenses and all other monies payable by the Borrower in respect thereof (hereinafter collectively referred to as "**the Secured Obligations**") shall, inter alia, be secured by a charge created on the assets of the Borrower, by the Borrower in favour of the Corporation.
- (C) The Parties hereto are desirous of recording the terms and conditions of their understanding specified herein this Deed;
- (D) All capitalised terms, unless specifically defined herein shall have the meanings ascribed to them respectively in the Agreement.

**NOW THEREFORE, THESE PRESENTS WITNESSETH AS FOLLOWS:**

- (1) The Borrower hereby declares and confirms that it is seized and possessed of, and otherwise well and sufficiently entitled to the Assets more particularly described in **Schedule I** hereto.
- (2)
  - (i) As security for the due payment / repayment of the Secured Obligations, and as a security for the obligations of the Borrower contained herein or the Agreement and/or any other Facility Agreements, the Borrower does hereby hypothecates, assigns and assures unto the Corporation the assets as mentioned in the Schedule I (hereinafter collectively referred to as "**the Hypothecated Assets**")
  - (ii) The Corporation shall have the first *pari passu* charge on the Hypothecated Assets as security for the Secured Obligations;
  - (iii) The Borrower hereby agrees and confirms that the charge created/to be created in terms of this Deed shall be a continuing security for the payment of the Secured Obligations and for the due performance by

the Borrower of their obligations under the Agreement and/or other any other Agreement as may have been executed between the Parties.

- (iv) The security shall:
  - (a) be binding upon the Borrower and its successors in title;
  - (b) extend to cover the Borrower's indebtedness hereunder or otherwise;
  - (c) not be discharged by any intermediate payment by the Borrower or any settlement of accounts between the Borrower and the Corporation;
  - (d) be in addition to and not in substitution for or derogation of any other security which the Corporation may at any time hold in respect of the Borrower's indebtedness/obligations hereunder; and
  
- (3) The Borrower shall ensure that the value of the Hypothecated Assets shall at all times be atleast \_\_\_% of the Assistance. To this end, the Borrower shall provide such periodic reports as may be required by the Corporation, and shall promptly inform the Corporation of any circumstances which will, or be likely to affect the valuation of the Hypothecated Assets and/or reduce the security as required to be maintained under this Deed.
  
- (4) It is specifically agreed and declared that the Hypothecated Assets and all sales realisations and insurance proceeds thereof and all documents/records in respect thereof shall be kept distinguishable and be held as the exclusive property of the Corporation, specifically appropriated to the security created hereunder and be dealt with only under the directions of the Corporation.
  
- (5) The Borrower will not create and/or permit and/or cause the creation of any further mortgage, charge, lien, pledge or encumbrance thereon, nor permit any attachment or distress, affecting the same or any part thereof, nor do anything or omit to do anything, which would prejudice the security created under these presents except to the extent specifically permitted hereunder by the Corporation in writing. The Borrower shall not sell, deal with or dispose off, any or all of the Hypothecated Assets in any manner whatsoever without the specific permission from the Corporation in writing. The Corporation shall be entitled, at its discretion, to require the Borrower and/or Borrower to pay over the net proceeds of any such sale/disposal

towards satisfaction of the Secured Obligations; provided that the Borrower may without payment to the Corporation, replace outmoded equipment by equipment of equivalent or greater value. However, the same shall be done only after giving prior notice to the Corporation.

- (6) All the said Hypothecated Assets of the Borrower hypothecated and charged to the Corporation shall, to the extent permissible under applicable law, be treated as moveable property and not as immoveable property.
- (7) The Borrower shall at their expense, keep the Hypothecated Assets in good and marketable condition and insure such of the Hypothecated Assets which are of insurable nature, in the name of the Borrower and the Corporation as the loss payee, against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, storm, tempest, flood, erection risk, war risk and/or such other force majeure risks as may be determined by the Corporation (including all marine, transit and other hazards incidental to the acquisition, transportation and delivery of the relevant Hypothecated Assets to the place of use or installation).
- (8) The Borrower shall deliver to the Corporation the relevant policies of insurance and maintain such insurance throughout the continuance of the security of these presents. The Borrower shall also deliver the renewal receipts / endorsements / renewed policies to the Corporation and till such insurance policies / renewal receipts / endorsements are delivered to the Corporation, the same shall be held by the Borrower in trust for the Corporation. The Borrower shall duly and punctually pay all such premia and shall not do or suffer to be done or omit to do or be done, any act which may invalidate or avoid such insurance.
- (9) The Borrower further expressly agrees that the Corporation shall be entitled, at its sole discretion, (i) to adjust, settle, compromise or refer to arbitration in accordance with the terms of Agreement, any dispute arising under or in connection with any insurance and such adjustment, settlement, compromise and any award made on such arbitration shall be valid and binding on the Borrower; and (ii) to receive all monies payable under any such insurance or under any claim made thereunder and to give a valid receipt therefore and that the amount so received shall be adjusted towards repayment / payment of the Secured Obligations and the Borrower shall not raise any question that a larger sum might or ought to have been received or

the Borrower shall not be entitled to dispute its liability for the balance remaining due, after such adjustment.

- (10) The Borrower shall pay respective rents, taxes and outgoings in respect of any immovable property in or on which the Hypothecated Assets may, for the time being, be lying and / or stored and shall keep such immovable property insured against loss or damage by fire and against such other risks, as may be required by the Corporation.
- (11) The Borrower hereby declares, undertakes, represents and warrants to the Corporation as follows:
  - (i) The Hypothecated Assets are and shall continue to be the absolute property of the Borrower and the Borrower is entitled to the beneficial ownership thereof; and the same are free and shall continue to be free from any charge, lien, trust or other encumbrances and attachments save and except the encumbrance created in favour of the Corporation hereunder and/or such encumbrances as may be permitted by the Corporation in terms hereof, and that the Borrower has not done or knowingly suffered to be party or privy to any thing done or suffered to be done whereby the Borrower is in any way prevented from charging/hypothecating the said Hypothecated Assets in a manner herein stated.
  - (ii) The Borrower has full power, capacity and authority to execute, deliver and perform all its obligations under this Deed and have taken all necessary actions and have obtained all necessary approvals (corporate, statutory or otherwise) to comply with the conditions and covenants contained herein.
  - (iii)
  - (iv) Neither the execution nor the delivery or performance of any obligations under this Deed shall contravene any provision of applicable law or any order, writ, injunction or decree of any court or governmental authority binding on them or violate any terms or provisions of its constitutional documents or any applicable statute, charter, rule or regulation nor conflict with or result in the breach of any of the terms, conditions and provisions of or constitute default or require any consent under any indenture, agreement, approval, license or other instrument to which they are a party or by which it is

bound.

- (v) The Borrower shall execute a Power of Attorney in favour of the Corporation (or persons so appointed by the Corporation) thereby granting the authorization to the Corporation to sell the Hypothecated Assets in case of default in repayment of Assistance in accordance with the terms of the Agreement;
  - (vi) In the event of the charge on the Hypothecated Assets having become enforceable for any reason whatsoever, the Borrower shall sign, execute and deliver to the Corporation all necessary deeds, agreements or any other documents as may be required by the Corporation to enforce their charge on the Hypothecated Assets under this Deed.
  - (vii) This Deed, and the security created in terms hereof, constitutes a valid and legally binding obligation enforceable against the Borrower in accordance with its terms.
  - (viii) The Borrower is not/ will not be entitled to and will not claim immunity for itself or any of its assets from any legal proceedings not limited to filing of civil suits, execution of decrees, attachment or other legal process in any proceedings in relation to this Deed.
- (12) The Borrower shall provide to the Corporation all such information, statements and returns, including in respect of the Hypothecated Assets, as may be called for by the Corporation from time to time.
- (13) The Corporation's authorized representative(s) / nominee(s) shall be entitled, at all times, without notice to the Borrower, at the risk and expense of the Borrower and if so required, as attorney for and in the name of the Borrower, to enter any place where the Hypothecated Assets and/or all records and documents in relation thereto may be lying, stored or kept and inspect, value, insure, superintend disposal and/or take particulars of all or any part of the Hypothecated Assets and check any statements, accounts, reports, information, and for the purpose of such entry, do all acts, deeds and things deemed necessary by the Corporation, including breaking open of any place where the Hypothecated Assets and/or the records and documents in relation thereto may be lying or stored or kept and the

Borrower undertakes that unimpaired access to the aforesaid place(s) are made available to the Corporation and their respective agents and nominees at all times as may be required by the Corporation.

- (14) In the event of any event of default and/or any breach or default by the Borrower in the performance of its obligations hereunder, or in the event of the charge on the Hypothecated Assets having become enforceable for any reason whatsoever, the Corporation or their nominees or authorised representatives shall, in case such breach or default is not remedied by the Borrower in accordance with the terms of this Deed, by giving notice but without assigning any reason and at the risk and expense of the Borrower, if necessary, as attorney for and in the name of the Borrower, be entitled (without prejudice to any other rights and remedies available to the Corporation), exercise all such rights and remedies available to the Corporation in respect of the Hypothecated Assets, including (but not limited to):
- (i) to enter into and upon the premises of the Borrower and/or any other person who then has possession of the Hypothecated Assets;
  - (ii) to seize, recover, collect, withdraw, receive the Hypothecated Assets and/or any income, profits and benefits thereof and also all books of accounts, papers, documents and vouchers and other records relating thereto, without interruption or hindrance by the Borrower and/or by any other person(s) having possession thereto;
  - (iii) to do all or any of the acts as are mentioned in the Power of Attorney issued by the Borrower in favour of the Corporation for the said purpose;
  - (iv) to give notices and demands to debtors and third parties liable therefore, sue for recovery, receive and give receipts for the same and to remove and/or sell by public auction or by private contract, despatch or consign for realisation or otherwise dispose of or deal with all or any part of the Hypothecated Assets and enforce, realise, settle, compromise and deal with any rights or claims relating thereto, without being bound to exercise any of these powers or be liable for any losses in the exercise or non-exercise thereof;

- (v) to be freed and discharged and be well and sufficiently saved and kept harmless and indemnified from and against all former and other estates, titles, claims, demands, charges and encumbrances whatsoever or to direct the Borrower and/or other concerned person(s) (having possession thereof) to sell, assign or otherwise liquidate, any or all of the Hypothecated Assets;
- (vi) to direct the Borrower and/or other concerned person(s) in writing, to deliver the Hypothecated Assets to the Corporation on a date and time indicated by the Corporation, in which event the Borrower shall, at its own expense: (a) deliver /cause the same to be delivered forthwith to the Corporation; and (b) provide /cause to be provided such guards and maintenance services as shall be necessary to protect the same;
- (vii) to exercise any step-in rights/rights of substitution and /or any other rights available to the Corporation under the Facility Agreements and/or as an assignee thereof, including to claim the benefits of all rights, entitlements, claims and powers of the Borrower thereunder and enforce the same in such form and manner as the Corporation may deem fit.

Notwithstanding any pending suit or other proceeding, the Borrower undertakes to give immediate possession of the Hypothecated Assets and all records / documents in relation thereto, to the nominees or authorized representatives of the Corporation, on demand and to transfer and to deliver to the Corporation all related bills, contracts, securities and documents and the Borrower hereby agrees to accept the Corporation's account of sales and realisations as sufficient proof of amounts realised and related expenses and to pay on demand any shortfall thereby shown. Provided however that, the Corporation shall not in any way be liable or responsible for any loss, damage or depreciation that the relevant Hypothecated Assets may suffer or sustain on any account whatsoever whilst the same are in possession of the Corporation or by reason of exercise or non-exercise of rights and remedies available to the Corporation as aforesaid.

- (15) (i) All costs, charges and expenses incurred/payable in connection with this Deed and/or the creation of the charge on the Hypothecated

Assets as specified herein, or the enforcement and collection thereof and all other incidental transactions including without limitation, the payment of stamp duty and legal fees, shall be borne by the Borrower, as the case may be. In the event the Corporation incurs any of the said expenditure, the Borrower shall promptly reimburse the same and until such reimbursement, the same shall be a charge on the Hypothecated Assets. The Borrower hereby indemnifies and agrees to keep indemnified the Corporation against any loss, damages, costs or expenses that it may incur or suffer in connection with this Deed and/or the pledge and/or charge created in terms hereof and/or pursuant to any breach/default of any of the terms hereof by the Borrower.

- (ii) The Corporation shall not be under any liability whatsoever towards the Borrower or any other person for any loss or damage to the Hypothecated Assets from or in whatever cause or manner arising, whether such Hypothecated Assets shall be in the possession of the Corporation or not, at the time of such loss or damage or the happening of the cause thereof. The Borrower shall at all times indemnify and keep indemnified the Corporation from all legal proceedings, costs including actual legal costs, charges, claims and demands whatsoever that may at any time arise or be brought or made by any person against the Corporation in respect of any act, matters and things lawfully done or caused by the Corporation in connection with the said Hypothecated Assets or in pursuance of the rights and powers of the Corporation or in connection with any matter under this Deed.
- (16) The Borrower undertakes that any further writings, documents, confirmations, authorisations, etc. required to be provided to confirm, continue, strengthen or reiterate the validity of or to carry into effect the provisions of this Deed or to ensure the full benefit and advantage of the Hypothecated Assets or to perfect or enforce the security created herein, shall be provided by the Borrower on demand by the Corporation.
- (17) This Deed shall ensure for the benefit of the Corporation and their successors in title and assigns and shall be binding upon the Borrower and its successors in title and permitted assigns. The Corporation may, without any requirement of prior notice/consent from any party assign, charge or

delegate to any person(s) any of its rights under this Deed and any person(s) to whom such rights are assigned, charged or delegated shall be entitled to the full benefit of the right(s) of the Corporation under this Deed. Any such assignment, charge or delegation shall be binding on the Borrower.

- (18) (i) Any notice or request given or made hereunder shall be in writing and the same shall be deemed to have been duly given or made if sent by Registered mail acknowledgment due, or facsimile to the Borrower and to the Corporation, as the case may be, at their respective addresses as specified hereinbelow:

**BORROWER** : \_\_\_\_\_  
Address : \_\_\_\_\_  
Fax No. : \_\_\_\_\_  
Attn : \_\_\_\_\_

**CORPORATION** : \_\_\_\_\_  
Address : \_\_\_\_\_  
Fax No. : \_\_\_\_\_  
Attn : \_\_\_\_\_

- (ii) Any such notice shall be deemed to have been served on the receiving party (a) if sent by letter, when delivered personally or if dispatched by post, when recall of the letter is outside the control of the sender; and (b) if sent by facsimile, when sent (on receipt of a confirmation to the correct facsimile number).

Provided, however, that no notice or communication to the Corporation shall be effective unless actually received by the Corporation.

- (19) This Deed shall be governed by and construed in accordance with the laws of India. The Borrower agrees that any legal action or proceedings arising under/in relation to these presents and/or the security created hereunder as aforesaid may be brought by the Corporation, in their absolute discretion, in any competent court, tribunal or other appropriate forum having jurisdiction.
- (20) The provisions contained herein shall be read in conjunction with the provisions of the Agreement and in the event of any inconsistency or

repugnancy the latter shall prevail to all intents and purposes. All Schedules hereof shall form an integral part of this Deed.

- (21) Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but that shall not invalidate the remaining provisions of this Deed or affect such provision in any other jurisdiction.

IN WITNESS THEREOF THE BORROWER IN ITS FREE VOLITION AND FULL UNDERSTANDING WITH THE INTENT TO LEGALLY BIND ITSELF TO THIS DEED EXECUTES THIS DEED THROUGH ITS DULY AUTHORISED REPRESENTATIVE ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN:

\_\_\_\_\_  
**For the Corporation**

\_\_\_\_\_  
**For the Borrower**

**WITNESSES:**

1.

2.

**Schedule I**

***Please give the list of the Assets being hypothecated on a case to case basis***