

ANNEXURE VIII

(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)

MORTGAGE DEED

This **Mortgage Deed** (“**Deed**”) dated this _____ day of _____ 2010 executed 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*];

WHEREAS:

- A. The Borrower is the absolute and exclusive owner in possession and/or is otherwise well and sufficiently entitled to the immovable property as detailed in the **Schedule 1** hereto, together with all, erections, structures, fixtures fittings, equipments and machinery thereon (hereinafter referred as the “**Mortgaged Assets**”), which are marketable and are free from encumbrances, attachments, charges and liens whatsoever;
- B. 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;

- C. 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.
- D. The Parties hereto are desirous of recording the terms and conditions of their understanding specified herein this Deed;
- E. All capitalised terms, unless specifically defined herein shall have the meanings ascribed to them respectively in the Agreement.

NOW, THEREFORE, THIS MORTGAGE DEED WITNESS AS FOLLOWS:

- 1. The Borrower hereby declares and confirms that it is the absolute and exclusive owner and is seized and possessed of, and otherwise well and sufficiently entitled to the Mortgaged Assets, which are marketable and are free from encumbrances, attachments, charges and liens whatsoever and as mentioned in **Schedule 1** hereto, together with all, erections, structures, fixtures fittings, equipments and machinery thereon.
- 2. (i) As security for the due payment / repayment of the Secured Obligations, and as security for the obligations of the Borrower contained herein or the Agreement and/or any other Facility Agreements, the Borrower does hereby mortgage the Mortgaged Assets unto the Corporation.

(ii) The Borrower hereby agrees and confirms that the mortgage created in terms of this Mortgage Deed shall be a continuing security for the payment of the Secured Obligations and the due performance by the

Borrower of its obligations hereunder and in the Agreement and/or any other agreements.

3. The Borrower shall ensure that the security of the Mortgaged 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 Mortgaged Assets and/or reduce the security below the said percentage/margin.
4. The Borrower hereby declares that the Mortgaged Assets are and will, at all times, be the absolute property of the Borrower, at the sole disposal of the Borrower and subject to the charges created and/or to be created thereon with the specific permission of the Corporation in writing, be free from any charge, mortgage, trust, pledge, lien, claim or encumbrance of any nature whatsoever.
5. It is specifically agreed and declared that the Mortgaged Assets and all title documents, other documents and 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. [*Note: The Corporation may on a case to case basis require deposit of the title documents by the Borrower.*]
6. The Borrower will not create and/or permit and/or cause the creation of any further mortgage, charge, lien, pledge or encumbrance on the Mortgaged Assets, 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 and/or by the Corporation in writing. The Borrower shall not sell, deal with or dispose off, any or all of the Mortgaged Assets in any manner whatsoever without the specific permission of the Corporation in writing. The Corporation shall be entitled, at its discretion, to require the Borrower to pay over the net proceeds of any such sale/disposal towards satisfaction of the Secured Obligations.
7. The Borrower shall at its expense, keep the Mortgaged Assets in good and marketable condition and if stipulated by the Corporation, insure such of the Mortgaged 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 fire, lightning, earthquake, explosion, riot, strike, civil commotion, storm,

tempest, flood, erection risk, war risk and/or such other risks as may be determined by the Corporation.

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 and deliver to the Corporation the renewal receipts / endorsements / renewed policies therefore and till such insurance policies / renewal receipts / endorsements are delivered to the Lender, the same shall be held by the Borrower in trust for the Corporation. The Borrower shall duly and punctually pay all 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. In default, the Corporation may (but shall not be bound to) take out/renew such insurance. Any premium paid by the Corporation and any costs, charges and expenses incurred by them shall forthwith on receipt of a notice of demand from the Corporation, be reimbursed by the Borrower as specified under the Agreement.
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 be entitled to dispute the liability of the Borrower for the balance remaining due, after such adjustment.
10. The Borrower shall pay all rents, taxes and outgoing in respect of the Mortgaged Assets as and when they become payable.
11. The Borrower hereby declares, undertakes, represents and warrants to the Corporation as follows:
 - (i) the Mortgaged 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 anything done or suffered to be done whereby the Borrower is in any way prevented from mortgaging the Mortgaged Assets in a manner herein stated.

- (ii) The Borrower has full power, capacity and authority to execute, deliver and perform all their obligations under this Mortgage Deed and have taken all necessary action and have obtained all necessary approvals (corporate, statutory or otherwise) to comply with the conditions and covenants contained herein.
- (iii) The Borrower is in compliance with and shall continue to comply with all applicable laws, bye-laws and regulations and with the terms and conditions of all applicable consents and authorizations with respect to this Mortgage Deed.
- (iv) Neither the execution nor the delivery or performance of any obligations under this Mortgage Deed shall contravene any provision of applicable law or any order, writ, injunction or decree of any court or governmental authority binding the Borrower 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 the Borrower is a party or by which it is bound.
- (v) Borrower shall execute the Power of Attorney as per formats provided, thereby authorizing the Corporation to sell the Mortgaged Assets in case of default in repayment of Assistance in accordance with the terms of the Agreement;
- (vi) In the event of the mortgage on the Mortgaged 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 rights on the Mortgaged Assets under this Mortgage Deed.

- (vii) This Mortgage Deed and the security created in terms hereof, constitute a valid and legally binding obligation enforceable against the Borrower in accordance with its terms.
 - (viii) The Borrower agrees not to lease out or part with possession or transfer or convey in any manner whatsoever the Mortgaged Assets in favour of any person without the consent in writing of the Lender.
 - (ix) The mortgage created on the Mortgaged Assets under this Mortgage Deed is in addition to and not in substitution of any other charge, pledge, hypothecation, etc., if any, created by the Borrower in favour of the Corporation.
 - (x) The mortgage of the Mortgaged Assets by the Borrower under this Mortgage Deed is intended to and shall operate as a continuing security to the Corporation for Secured Obligations of the Borrower at all times during the subsistence of this mortgage.
 - (xi) The Borrower is not/ shall not be entitled to and shall not claim immunity for itself or any of its assets from suit, execution, attachment or other legal process in any proceedings in relation to this Mortgage Deed.
12. The Borrower shall provide to the Corporation all such information, statements and returns in respect of the Mortgaged 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 and at the risk and expense of the Borrower and if so required, as attorney for and in the name of the Borrower, to enter the Mortgaged Assets and any place where all records and documents in relation thereto may be lying, stored or kept and inspect and/or take particulars of all or any part of the Mortgaged 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 such the records and documents in relation to the Mortgaged Assets 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 foreclosure of the Mortgaged 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 Mortgage Deed, by giving notice but and without assigning any reason and at the risk and expense of the Borrower and, 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 Mortgaged Assets, including (but not limited to):
- (i) to enter into and upon the Mortgaged Assets of the Borrower and/or any other person who then has possession of the Mortgaged Assets;
 - (ii) 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 Mortgaged 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;
 - (iii) to be freed and discharged and be well and sufficiently saved and kept harmless and indemnified of, 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) to sell, assign or otherwise liquidate, any or all of the Mortgaged Assets;
 - (iv) to do all or any of the acts as are mentioned in the Power of Attorney issued by Borrower in favour of the Corporation;
 - (v) to direct the Borrower and/or other concerned person(s) in writing, to deliver the possession of Mortgaged Assets to the Corporation on a date and time indicated by the Corporation, in which event the

Borrower shall, at its own expense deliver the possession / cause the same to be delivered forthwith to the Corporation;

- (vi) to exercise any step-in rights/rights of substitution and /or any other rights available to the Corporation under the Project Documents 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 Lender may deem fit.

Notwithstanding any pending suit or other proceeding, the Borrower undertakes to give immediate possession of the Mortgaged Assets and all title documents / records / documents in relation thereto, to the nominees or authorized representatives of the Corporation and the Borrower hereby agrees to accept the Corporation's account of sales and realizations pertaining to sale of the Mortgaged Assets by the Corporation 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 Mortgaged 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.

- 15. (i) All costs, charges and expenses incurred/payable in connection with this Mortgage Deed and/or the creation of the charge on the Mortgaged Assets as specified herein, or the enforcement thereof and all other incidental transactions including without limitation, the payment of stamp duty and legal fees, shall be borne by the Borrower. In the event the Corporation incurs any of the said expenditure (without being obliged to do so) the Borrower shall promptly reimburse the same and until such reimbursement, the same shall be a charge on the Mortgaged Assets. The Borrower hereby indemnifies and agrees to keep indemnified the Corporation against any loss, damages, costs or expenses that they may incur or suffer in connection with this Mortgage Deed and/or the mortgage 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 Mortgaged Assets from or in whatever cause or manner arising, whether such Mortgaged 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 and against all suits, 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 Mortgaged Assets or in pursuance of the rights and powers of the Corporation or in connection with any matter under this Mortgage 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 Mortgage Deed or to ensure the full benefit and advantage of the Mortgaged Assets or to perfect or enforce the security created herein, shall be provided by the Borrower on demand by the Corporation.

- 17. This Mortgage Deed shall ensure for the benefit of the Corporation and their successors in title and assigns and shall be binding upon the Borrower and their 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 Mortgage 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 Mortgage 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 Mortgage 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 mortgage/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. All the obligations of the Borrower as mortgagor and all the rights and remedies and powers of the Corporation as mortgagee under the law for the time being in force except so far as they may be expressly varied or may be inconsistent with these presents shall be deemed to be incorporated in these presents.

21. 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. The schedules hereof shall form an integral part of this Mortgage Deed.
22. Any provision of this Mortgage 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 Mortgage 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:-

Witness 1 : _____

Witness 2 : _____

SCHEDULE 1

Please give the detailed list and description of the Mortgaged Assets on a case to case basis