

REVENUE SHARING AGREEMENT

THIS REVENUE SHARING AGREEMENT is made at New Delhi on ____ day of _____, 20____.

BETWEEN:

NATIONAL SKILL DEVELOPMENT CORPORATION a private limited company incorporated under the Companies Act, 1956 and having its registered office at D-4, Clarion Collection, Shaheed Jeet Singh Marg, New Delhi-110016, India (hereinafter referred to as “**NSDC**” which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **One Part**, acting through Mr.Dilip Chenoy, the Managing Director and Chief Executive Officer of NSDC.

AND

_____, a company incorporated under the Companies Act, 1956 **having** its registered office situated at _____(hereinafter referred to as “_____” which expression shall, unless it be repugnant to the subject or context thereof, include its successor and permitted assigns) of the **Other Part** acting through Mr. Vijay K. Thadani, Director duly authorized in this regard vide board resolution dated 30.9.2011.

NSDC and _____ are hereinafter individually referred to as a “**Party**”, and collectively, as “**Parties**”.

WHEREAS

- (i) NSDC is a not- for-profit Company incorporated under the Companies Act, 1956 and licensed under Section 25 of the Companies Act, 1956.

- (ii) NSDC is established with the object of developing unskilled and semi-skilled labour force into productive and skilled labour and to establish, manage, run and support institutes, companies and polytechnics for achieving this objective including constituting sector skill councils in the various Focus Sectors to initiate, execute, implement, aid and assist activities towards skill development to enable establishment of competency standards in qualification and promotion of academies of excellence.
- (iii) _____ is set up to engage in the business of education and training and setting up of skill development centres/facilities, to build an inclusive, enabled and skilled society, by vocationally skilling youth in to employable professionals in various sectors including Focus Sectors. Further, for the purpose and for related activities and assistance, _____ collaborates/partners with appropriate organizations, entities, and Governments, including NSDC and its partners, from time to time.
- (iv) NSDC is supporting the skill development activities and initiatives of _____ inter-alia by way of tangible and intangible support including facilitating the tie-ups with sector skill councils, micro finance institutions and banks, creating market awareness, endorsement of _____'s programs and such other support as may be requested by _____ from time to time in consonance with the Business Plan. In consideration of which _____ has agreed with NSDC for a Revenue Sharing Arrangement during the Revenue Sharing Period, in order to enable other entities engaged in skill development to also benefit from NSDC's expertise and experience, on the terms and conditions stated hereunder.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING PREMISES, UNDERTAKINGS, AGREEMENTS, COVENANTS AND MUTAL PROMISES CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES INTENDING TO BE LEGALLY BOUND HAVE AGREED AS FOLLOWS:

ARTICLE I

DEFINITIONS

- A. In this Agreement, unless the context otherwise requires, the following expressions shall have the same meaning as set out against each other:

“**Agreement**” means this Revenue Sharing Agreement including all the schedules attached hereto.

“**Business**” means the business being carried on by _____ from time to time (including through Business Partners) including education and training, setting up of skill development centers/facilities, to build an inclusive, enabled and skilled society, by vocationally skilling youth in to employable professionals in the Focus Sectors.

“**Business Days**” shall mean days (other than a Sunday) on which banks in New Delhi, are generally open for business.

“**Business Partners**” means the business associates of _____ or the Promoter in the territory of India and shall include any existing or future Business Partners of _____, through whom _____ facilitates their Business.

“**Business Plan**” means the initial business plan of _____, inter-alia setting out the Revenue Sharing Arrangement during the Project Implementation Period, including the Project cost, benefit from the Project, etc., annexed hereto as **Schedule A**.

“**Cumulative Amount**” means the total envisaged revenue share amount based on percentage of Operating Revenues, not exceeding Rupees _____ (Rupees _____ only), during the Revenue Sharing Period of the Project Implementation Period as envisaged in the Business Plan, which may be revised downwards in case of any change in the Business Plan that shall require such downward revision.

“**Focus Sectors**” means the _____ focus sectors as enlisted in **Schedule B**.

“**Definitive Agreements**” means this Agreement, loan agreement, deed of hypothecation, market development agreement, corporate guarantee, entered between the Parties along with their respective schedules, annexures and amendments, if any.

“**Operating Revenues**” means the total revenue collected excluding service tax or any similar taxes, by _____ from students and candidates less (i) such share of enrollment fee, commission, payment of operating and administrative expenses incurred by and payable to the Business Partners; and (ii) revenue collected for hardware/software provided to students or candidates by _____ or by Business Partners which is included in the total revenue collected excluding service tax or any similar taxes hereinabove from students and candidates.

“**Project**” means the scheduled plan of activities undertaken by _____ under the Business Plan including the representations, undertakings and assurances given by _____.

“**Project Implementation Period**” means the period commencing from Year 0 and ending at the completion of Year 10.

“**Promoter**” means _____, the parent company of _____.

“**Revenue Sharing Arrangement**” shall have the meaning ascribed to it in Article II.

“Revenue Sharing Period” means the period commencing from Year __ to Year ____ and every subsequent year till the Cumulative Amount is paid off by _____ to NSDC.

“Year 1” onwards, on a case to case basis....

“Year 10” means a period of 12 (twelve) months commencing on the day immediately succeeding the last day of Year 9.

ARTICLE II

REVENUE SHARING ARRANGEMENT

- A. In consideration of mutual promises contained in preamble (iv) of this Agreement, _____ hereby agrees to the Revenue Sharing Arrangement with NSDC in accordance with the terms and conditions set out hereinafter.
- B. _____ has agreed to share the Operating Revenues with NSDC, during the Revenue Sharing Period, till the receipt of the Cumulative Amount by NSDC, as follows:

Year	6	7	8	9	10	Subsequent Years (if required)
Percentage of Operating Revenue of _____ for Revenue Sharing applicable for each year						

- C. In the event, the Cumulative Amount is not reached before or at the end of Year __, the Revenue Sharing Arrangement shall be extended for each subsequent year, beyond the Project Implementation Period, at the rate of 2%, till the ‘Cumulative Amount’ is reached. For avoidance of doubt, it is hereby clarified that the Revenue Sharing Arrangement shall not exceed the Cumulative Amount and the same shall be inclusive of all taxes, duties, levies or charges as are applicable to such payments under applicable laws and shall also be subject to any withholding tax/tax deductible at source or any other similar deductions applicable at the time of making the payment.
- D. The Revenue Sharing Arrangement, commencing from Year __, shall be subject to the timely disbursement, reimbursements and intangible support, as laid out in the Business Plan and in this Agreement. Further, the ‘Cumulative Amount’ shall be accordingly revised downwards, in case of any change in the Business Plan and the terms herein.

E. _____ shall credit the monies as contemplated herein above, to the designated corporate bank account of NSDC for every quarter for the respective year on or before the seventh day of the subsequent respective quarter of each year during the Revenue Sharing Period:

ARTICLE III
COVENANTS OF THE PARTIES

A. _____ covenants to NSDC that:

- (i) It shall credit the monies as set out in Article II, to the corporate bank account of NSDC during the Revenue Sharing Period, in such time and manner as stipulated therein.
- (ii) It shall maintain records to substantiate the profit and loss account and balance sheet of _____.
- (iii) It shall permit NSDC and its duly authorized representatives to examine/inspect the records of _____, during the Revenue Sharing Period, with a 5 (Five) days advance notice.
- (iv) It shall cooperate with NSDC and its duly authorized representatives during the inspection, as contemplated in the clause above and facilitate expediting the process by providing access to all records and documents, as requested by NSDC, promptly.
- (v) It shall cause its Promoter to provide a corporate guarantee / undertake, in a mutually agreed form incorporating the details as set out in **Schedule C**, on progressive basis as provided herein below, for assuring NSDC the payments under Revenue Sharing Arrangement, as determined, due and payable in each year based on the specified percentage set out in the Revenue Sharing Arrangement hereinabove (**“Corporate Guarantee”**):
- (vi)

Year	Amount to be Guaranteed
On the beginning of Year __	Not Exceeding Rs. _____ (Rupees _____ Only) (Amount equivalent to Year 6 Revenue Sharing percentage, as envisaged in the Business Plan)

On the beginning of Year __	Not Exceeding Rs. _____(Rupees _____only) (Amount equivalent to Year __ Revenue Sharing percentage, as envisaged in the Business Plan)
To be added on a case to case basis	

- (vii) It shall ensure compliance with all applicable laws in the execution of the Agreement.
- (viii) It shall comply with all the provisions of Financial Management and Procurement Manual of NSDC.

ARTICLE IV

REPRESENTATIONS OF _____ AND NSDC

A. _____ hereby, represents and warrants to NSDC as follows:

- (i) It has full legal power and authority to carry on its business and to enter into Agreement and perform all of its obligations hereunder and the same would not breach any of its agreements or obligations with any third party;
- (ii) Neither the execution nor delivery of this Agreement, nor the fulfillment or compliance with the terms and provisions hereof, will conflict with, or result in a breach of terms, conditions or provisions of, or constitute a default under, or result in any violation of its charter documents, or any agreement, restrictions, instrument, order, judgment, decree, statute, law, rule or regulation to which it is subject, or require any consent, approval or other action by any court or administrative or Governmental body.
- (iii) It shall comply with all applicable laws, rules, regulations and Government orders, in performing its obligations under this Agreement.
- (iv) It has not provided any false declaration or suppressed any material information.
- (v) All the representations made herein and otherwise, either in writing or orally are true and correct and _____ further confirms that the representations contained herein shall be deemed to be repeated by _____ on and as of each day from the date of this Agreement till the expiry of the same, as if made with reference to the facts and circumstances existing on such day.

- B. NSDC hereby, represents and warrants to _____ as follows:
- (i) It is duly incorporated and has full legal power and authority to carry on its business and to enter into Agreement and perform all of its obligation hereunder and the same would not breach any of its agreements or obligations with any third party.

ARTICLE V

TERM AND TERMINATION

- A. This Agreement shall terminate automatically upon the receipt of the Cumulative Amount.
- B. NSDC shall have the right to terminate this Agreement forthwith on the happening of any of the following events:
 - (i) _____ commits a material breach of any provision or covenant under the Definitive Agreements.
 - (ii) Any representation or warranty given by _____ is found to be untrue.
 - (iii) _____ is ordered to be wound up by a court of law or is deemed to be unable to pay its debts.
 - (iv) _____ voluntarily initiates any proceedings / takes any action for its winding up , liquidation, merger arrangement with its creditors.
 - (v) A receiver is appointed by a court of competent jurisdiction with respect to the assets or properties of _____.
- C. This Agreement shall be effective from the date of execution and shall continue till the end of the Project Implementation Period or till the receipt of Cumulative Amount and the same is duly accepted by NSDC under signature of its authorized signatories, unless terminated in accordance with the provisions of this Agreement or upon termination of any of the Definitive Agreements, whichever is earlier.
- D. Notwithstanding anything provided elsewhere in this Agreement or any Definitive Agreement, upon this Agreement ceasing to have effect for any reasons whatsoever, the obligations of _____ to make payment to NSDC as set out in Article II hereinabove shall survive.
- E. In the event of failure on part of _____ to pay the amount as required under Article II, clause D, which is due and payable, or in the event of termination of the Agreement for any reason attributable to _____ hereunder, NSDC shall have the right to invoke the

Corporate Guarantee for any amount due and outstanding, at the sole cost, risk and expense of _____ and the Promoter.

ARTICLE VI
CONFIDENTIALITY

- A. _____ recognizes, accepts and agrees that all the information obtained or disclosed, including, but not limited to all data, documents, applications, papers, statements, slips, programs, plans and/or any business, marketing strategies/plans and any and all other business secrets, confidential knowledge or information of NSDC relating to its business practices and procedures (hereinafter collectively referred to as ‘**Confidential Information**’) which may be provided or communicated by NSDC to _____ in connection with this Agreement, and/or in the course of performance under this Agreement, is, shall be and shall remain the sole property of NSDC and shall be of a strictly private and confidential nature and shall be treated as confidential by _____ unless:
- (i) it is in the public domain at the time of disclosure;
 - (ii) it comes into the public domain other than as a result of a wrongful act or omission on the part of _____ or any one or more of the employee(s) / personnel thereof; or
 - (iii) it is disclosed to _____ by a third party in such circumstances which do not involve a breach of any obligation of confidentiality owed to NSDC.
- B. During the Revenue Sharing Period of this Agreement and thereafter, _____ shall not make use of any such Confidential Information for any purpose whatsoever which is not necessary for the discharge of its obligations under this Agreement, or to the disadvantage of NSDC providing such Confidential Information, nor shall _____ divulge it to anyone other than NSDC or persons designated by NSDC.
- C. All Confidential Information shall be returned forthwith by _____ receiving such Confidential Information to NSDC providing the Information on the expiry or termination of this Agreement.

ARTICLE VII

FORCE MAJEURE

- 6.1 Neither Party shall be responsible for the failure to perform any obligation otherwise due under this Agreement as a result of any event beyond the reasonable control of such Party and which could not have been foreseen due to any enactment of laws, regulations, , or as a result of events, such as war, acts of public enemies, terrorism, fires, floods, acts of God, strikes (being only national or regional strikes) or any causes beyond the reasonable control of such Party.
- 6.2 Notwithstanding the above, the Party so prevented from performing its obligations under this Agreement due to a force majeure event shall immediately inform the other Party of the occurrence of such event and shall make best efforts to alleviate the effects of such force majeure event by any actions that may be reasonably possible.
- 6.3 If a force majeure event continues to prevent or delay performance of such Party for more than 60 (sixty) Business Days from the date of occurrence, the other Party may terminate this Agreement, effective immediately upon written notice to such Party.

ARTICLE VIII

NOTICE

- A. Any notice or request to be given or made by a Party to the other shall be in writing and posted, delivered personally or sent by courier, registered or certified mail or facsimile transmission. Such notice or request shall be deemed to have been duly received by the Party to whom it is addressed if it is given or made at such Party's address specified below:

National Skill Development Corporation

Registered Office: D – 4, Clarion Collection, Shaheed Jeet Singh Marg,

New Delhi – 110016

Kind Attn: The CEO and Managing Director, NSDC

Fax: +91 11 4656 0417

Registered Office:

Kind Attn:

Fax:

ARTICLE IX
GOVERNING LAW

- A. This Agreement shall be governed by and construed in accordance with the laws of India.

ARTICLE X
AMENDMENT

- A. This Agreement may only be amended by an agreement in writing signed by NSDC and _____, provided that any amendment is approved in advance by board of directors of Parties.

ARTICLE XI
DISPUTE RESOLUTION

- A. All or any dispute, controversy, claim or disagreement arising out of or touching upon or in relation to the terms of this Agreement or its termination, breach, invalidity, including the interpretation and validity thereof and the respective rights and obligations of the Parties hereof, that cannot be amicably resolved by mutual discussion within thirty (30) Business Days, shall be settled by a sole arbitrator, to be nominated by NSDC and as per the provisions of the Arbitration and Conciliation Act, 1996 which shall be final and binding on the Parties. The proceedings of the arbitration shall be in accordance with the Rules of Arbitration of the Indian Council of Arbitration (“ICA”) which rules are deemed to be incorporated by reference in this clause and the award made in pursuance thereof shall be binding on the Parties;
- B. The place of arbitration shall be New Delhi and the Courts of Delhi shall have exclusive jurisdiction. The arbitration proceedings shall be conducted in the English language.
- C. During the pendency of any dispute resolution exercise whether by negotiations or arbitration, the Parties shall be bound by the terms of this Agreement and shall continue to perform their respective obligations not under dispute under this Agreement.

ARTICLE XII
ENTIRE AGREEMENT

- A. This Agreement and any other documents attached hereto or referred to herein, integrate all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect of the subject matter hereof.

ARTICLE XIII
WAIVER

- A. Any failure by NSDC to require strict performance by _____ of any provision of this Agreement shall in no way affect NSDC right to require such performance at any time thereafter, nor shall the waiver by NSDC of any breach of any provision of this Agreement be taken or held to constitute a waiver of any succeeding breach of such or any other provision of this Agreement. No waiver by NSDC of any provision of this Agreement shall be binding upon NSDC unless it is in writing and is signed by the duly authorized representative of NSDC.

ARTICLE XIV
SEVERANCE

- A. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect. If any such invalidity or unenforceability substantially alter the commercial basis of this Agreement, the Parties shall negotiate in good faith to amend and modify the provisions of this Agreement to the extent possible, to give effect to the intention of the Parties under this Agreement.

ARTICLE XV
RELATIONSHIP

- A. The relationship between NSDC and _____ under this Agreement will be on a principal to principal basis. Nothing in this Agreement shall be taken as to constitute _____ or any of its personnel, assignee, representative or any other person, as an employee or

agent of NSDC. The Parties undertake that none of their personnel shall be construed in any manner, either expressly or by implication, as the employees or agents of NSDC.

- B. NSDC and _____ acknowledge that:
- (i) Neither is the legal representative, agent, joint venture or partner of the other for any purposes; and
 - (ii) Neither of them has any right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, on behalf of the other or to bind the other in any respect.
- C. _____'s further acknowledges that neither it nor its personnel, agents or representatives shall be entitled to make representations or give or purport to give warranties either on their own behalf or on behalf of NSDC.

ARTICLE XVI

ASSIGNMENT

- A. _____ shall not have right to assign his obligations or rights under this Agreement in whole or in part, or transfer or modify or sub contract this Agreement in favour of any third party save and except with the prior written approval of NSDC.
- B. Save and except as a result of any Law, NSDC shall not assign its obligations or rights under this Agreement in whole or in part, or transfer or modify this Agreement in favour of any third party without the prior written approval of _____.

IN WITNESS THEREOF THE PARTIES IN THEIR FREE VOLITION AND FULL UNDERSTANDING WITH THE INTENT TO LEGALLY BIND THEMSELVES TO THIS AGREEMENT EXECUTE THIS AGREEMENT THROUGH THEIR DULY AUTHORISED PERSONNELS:-

<p>Signed and delivered for and on behalf of NATIONAL SKILL DEVELOPMENT CORPORATION Name Mr. Dilip Chenoy, CEO & Managing Director Signatures _____ Date: 30.9.2011</p>	<p>Witnessed by: Name _____ Address _____ Signatures _____</p>
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<p>Signed and delivered for and on behalf of _____</p> <p>Name – _____</p> <p>Signatures _____</p> <p>Date: _____</p>	<p>Witnessed by:</p> <p>Name _____</p> <p>Address _____</p> <p>Signatures _____</p>
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**SCHEDULE A
BUSINESS PLAN**

SCHEDULE B
FOCUS SECTORS

**SCHEDULE C
CORPORATE GUARANTEE DETAILS**

Year	Amount to be Guaranteed
To be completed on a case to case basis	