



# BUSINESS PARTNERS POLICY

Enkay Technologies India Pvt. Ltd.  
Enkay House, Bhima Vaitarna Complex,  
Sir Pochkhanawala Road, Worli, Mumbai  
400 030

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## INTRODUCTION AND OVERVIEW

ENKAY Technologies India Pvt. Ltd. has positioned itself as a Converged Solution Provider in Indian market. ENKAY has strategic tie-up with a number of World renowned companies like : NEC, GE (Morpho Detection), Emblaze V Con, Sharp, HP, Crestron, Extron and more for different solutions, which are required to fulfill needs of customers in Enterprise Communication Space. ENKAY has rich experience of providing Telecom Solution to Indian customers for more than 30 years and are in a position to provide the latest Solutions and also the post-sales support to meet their needs.

As a part of our growth strategy, ENKAY wants to leverage the strength and customer contacts of Business Partners to enlarge geographical coverage and thereby be close to the customers. We consider Business Partners as a part of our Eco-system playing an important role of a function aggregator in our value chain of Pre-Sales and Post-Sales process of satisfying customer needs. ENKAY would like to develop a long term relationship with Business Partners so as to co-create value for our esteemed customers. Business Partners are expected to play a significant role in understanding the market dynamics, competitive landscape and functional needs (present and future) of customers in their geographical area.

Business Partners are expected to work as per the mutually agreed policy and ensure the target sets are met / exceeded while delighting customers. ENKAY would also reciprocate with required support (from Pre-Sales to Post-Sales stage) so as to ensure the Business Partners succeeds.

As a part of our strategy, we have firmed up "Business Partners Policy" which covers engagement guidelines, agreement and also qualifying criteria so that we have a clear understanding between ENKAY and Business Partners on how to conduct the business.

ENKAY would welcome Business Partners to be a part of our family and grow together.

## ENKAY'S VALUE PROPOSITION

1. LONGTERM COMMITMENT TO CONVERGED COMMUNICATION BUSINESS:

ENKAY Technologies (India) Pvt. Ltd. has been in the business for more than 30 years starting with initial foray into telecom. We are committed to this business on a long term basis.

2. BRANDEQUITY OF ENKAY:

ENKAY enjoys excellent brand equity and reputation among Customers, Vendors and Research Analysts as a Converged Solutions player in Indian Market.

3. PRODUCT PORT FOLIO:

ENKAY provides and supports wide portfolio for Converged Solutions coming from World Class Brands like NEC, Emblaze V Con, GE (Morpho Detection), Sharp, HP, Crestron, etc.

4. LONGSTANDING PARTNERSHIP WITH PARTNERS:

ENKAY enjoys very good relationship with its Technology Partners like NEC, Emblaze V Con, GE (Morpho Detection), Sharp, HP, and Crestron. ENKAY has not been switching partners like many other players of present era.

5. COMMITMENT & FOCUS ON CO-CREATING VALUE WITH BUSINESS PARTNER :

ENKAY as a policy believes that Business Partners are a part of our family, and they also act as a function aggregator in our chain of relationship with customers. ENKAY is committed to avoiding over distribution by having a limited number of qualified partners in a given area and not appoint a large number of partners, which only encourages unhealthy price competition.

6. PAN INDIA PRESENCE OF SALES AND POST SALES SUPPORT NETWORK :

ENKAY has presence in most of the major cities of India wherein they have experienced sales and customer support resources to backup the partner. We have direct presence in 9 major cities all over India by means of 9 branch offices and apart from that we have resident sales & service staff in more cities.

7. EXPERIENCED AND HIGHLY SKILLED SALES AND SERVICE PERSONNEL:

We have more than 200 technically skilled staff, OEM trained engineers that have a cumulative work experience of 20 years plus and have the necessary tools, support infrastructure to handle and maintain after sales support service as needed in our nature of business.

8. ENKAY'S KEY VALUE PROPOSITION :

Strong solution portfolio both in Converged Solutions coming from world class suppliers and backed up by rich experience of ENKAY Technologies. This will ensure that we can provide One-Stop solution for customers for their Communication/ IT needs. This will ensure the Business Partner is not dependant on only one set of products but has a range to provide to customers.

BUSINESS PARTNER POLICY FOR HD600 HD

- 1 Range : HD600 HD
- 2 Installation & commissioning : To be done by Business Partner
- 3 Warranty and Annual Maintenance : HD600 HD  
Warranty is 12 months from the date of Enkay's Invoice to channel partner.  
Repairs of components will not be chargeable during warranty and will be chargeable after warranty period.
- 4 Software :  
For Software upgradation, Dot version upgradation will not be chargeable e.g. version 3.2 to version 3.3 will not be chargeable but, version change will be chargeable e.g. version 3.00 to version 4.00.
- 5 Delivery : Delivery will be within maximum 4 -6 weeks from the date of receipt of technically and commercially and technically clear order and on receipt of full payment. No dispatch shall be made unless accompanies without an Invoice from Enkay.
- 6 Initial Investment : On appointment the Business Partner is expected to invest in stocks of HD600 HD as follows :-  
For Major cities (Mumbai, Delhi)
  - Minimum Rs.4.00 lacs at a timeFor Pune, Bangalore, Hyderabad, Kolkatta and Chennai
  - Minimum Rs.3.00 lacs at a timeFor other towns and cities
  - Minimum Rs.1.50 lacs at a time

- 7 Terms of payment : 100% payment together with all taxes and duties along with the order and whichever commercial forms required e.g. 'C' form, Entry form to be submitted along with the order.
- 8 Infra structure : The Business Partner is expected to have a proper sales and service manpower in order to ensure maximum market reach. The number of sales / service personnel will depend upon the size of the market and will be mutually agreed. Enkay Technologies will periodically audit the efficacy and competence of the Business Partners' Sales / Service team.
- 9 Training : The Business Partner's Sales / Service personnel will be trained by the Company on product.  
Product Training (Sales) - 2 trainings per year.  
Technical Training per year ó for 2 persons is free per year.  
Any additional technical training will be charged at Rs.10,000/- per person. However boarding / lodging, to and fro travel expenses / incidental charges will be borne by Partner.
- 10 Manual : One set of Manual will be provided in CD Form.
- 11 Targets / Stock planning : Annual Sales Targets will be mutually discussed and agreed by the Company and Business Partner at the time of appointment which will be broken up monthly. The Business Partner is expected to ensure adequate stock levels of popular models at all times, the 75% of the agreed monthly targets. The monthly stock order should reach the Company latest by 15th of each month for billing with same month.

- 12 Prices : Prices will be as per Company's Price List prevailing at the time of dispatch.
- 13 Sales Promotion / Advertising : The Company will reimburse to the Business Partner 50% of the advertising expenses , the total value of ad expense amounting upto 2% of the total billing achieved by partner per annum. The sales promotion plan and ads need prior approval in writing from the Enkay management. This budget is applicable for partners whose cumulative invoices amount over and above 25 lakhs per annum.
- 14 Competitive Agencies : It is understood that the Business Partner will not handle competitive lines which will affect Company's business directly or indirectly.
- 15 Discontinuation : The dealership agreement can be discontinued by giving two months notice from either side. There will be no obligation on Enkay's part to take back the material supplied earlier.
- 16 Marketing : Enkay's region has to declare details of named accounts of Corporate and MNC to be handled directly by Enkay.

Note: Our engagement guideline may undergo change time to time to accommodate business dynamic related changes.



GLOBAL CONVERGENCE

## BUSINESS PARTNER POLICY FOR XPOINT LT



- 1 Range : X point LT full system set up
- 2 Installation & commissioning : To be done by Business Partner
- 3 Warranty and Annual Maintenance : Xpoint LT  
Business Partners are to enter AMC Contracts directly with customers. Warranty is 12 months from the date of Enkay's Invoice to channel partner. Repairs of components will not be Chargeable during warranty and will be chargeable after warranty period.
- 4 Software : For Software upgradation, Dot version upgradation will not be chargeable version 3.2 to version 3.3 will not be chargeable but, version change will be chargeable e.g. version 3.00 to version 4.00.
- 5 Delivery : Delivery will be within maximum 4 -6 weeks from the date of receipt of and commercially clear order and also on receipt of full payment.
- 6 Initial Investment : On appointment the Business Partner is expected to invest in stocks of XPoint LT as follows :-  
For Major cities (Mumbai, Delhi)
  - Minimum 5 units at a timeFor Pune, Bangalore, Hyderabad, Kolkatta and Chennai
  - Minimum 3 units at a timeFor other towns and cities
  - Minimum 2 units at a time

- 7 Terms of payment : 100% payment together with all taxes and duties along with the order and whichever commercial forms required e.g. 'C' form, Entry form to be submitted along with the order.
- 8 Infra structure : The Business Partner is expected to have a proper sales and service manpower in order to ensure maximum market reach. The number of sales / service personnel will depend upon the size of the market and will be mutually agreed. Enkay Technologies will periodically audit the efficacy and competence of the Business Partners' Sales / Service team.
- 9 Training : The Business Partner's Sales / Service personnel will be trained by the Company on product.  
Product Training (Sales) - 2 trainings per year.  
Technical Training per year: will be free for 2 personnel per year. Any additional technical training will be charged at Rs.10,000/- per person. However boarding / lodging, to and fro travel expenses / incidental charges will be borne by Partner.
- 10 Manual : One set of Manual will be provided in CD Form.
- 11 Targets / Stock planning : Annual Sales Targets will be mutually discussed and agreed by the Company and Business Partner at the time of appointment which will be broken up monthly. The Business Partner is expected to ensure adequate stock levels of popular models at all times, the value of which should not be less than 75% of the agreed monthly targets. The monthly stock order should reach the Company latest by 15th of each month for billing with same month.

- 12 Prices : Prices will be as per Company's Price List prevailing at the time of dispatch.
- 13 Sales Promotion / Advertising : The Company will reimburse to the Business Partner 50% of the advertising expenses , the total value of ad expense amounting upto 2% of the total billing achieved by partner per annum. The sales promotion plan and ads need prior approval in writing from the Enkay management. This budget is applicable for partners whose cumulative invoices amount over and above 25 lakhs per annum
- 14 Competitive Agencies : It is understood that the Business Partner will not handle competitive lines which will affect Company's business directly or indirectly.
- 15 Discontinuation : The dealership agreement can be discontinued by giving two months notice from either side. In case of discontinuation Enkay is not obliged to take back any stock inventory from partner
- 16 Marketing : Enkay's region has to declare details of named accounts of Corporate and MNC to be handled directly by Enkay.

Note: Our engagement guideline may undergo change time to time to accommodate business dynamic related changes.

## BUSINESS PARTNER POLICY FOR X POINT HD

- 1 Range : X POINT HD (M4, M6 and M9)
- 2 Installation & commissioning : To be done by Business Partner
- 3 Warranty and Annual Maintenance Contracts : X POINT HD (M4, M6 and M9)  

Business Partners are to enter AMC Contracts directly with customers. Warranty is 12 months from the date of Enkay's Invoice to channel partner. Repairs of components will not be Chargeable during warranty and will be chargeable after warranty period.
- 4 Software : For Software upgradation, Dot version will not be chargeable e.g. version 3.2 version 3.3 will not be chargeable but, version change will be chargeable e.g. version 3.00 to version 4.00.
- 5 Delivery : Delivery will be within maximum 4 -6 weeks from the date of receipt of technically and commercially clear order and also on receipt of full payment.
- 6 Initial Investment : On appointment the Business Partner is expected to invest in stocks of X HD as follows :-  
For Major cities (Mumbai, Delhi)
  - minimum 3 UNITS at a timeFor Bangalore, Hyderabad, Pune, Kolkatta And Chennai
  - Minimum 2 UNITS at a timeFor other cities / towns
  - minimum 1 UNIT at a time.



GLOBAL CONVERGENCE



- 7 Terms of payment : 100% payment together with all taxes and duties along with the order and whichever commercial forms required e.g. 'C' form Entry form to be submitted along with the order.
- 8 Infra structure : The Business Partner is expected to have a proper sales and service manpower in order to ensure maximum market reach. The number of sales / service personnel will depend upon the size of the market and will be mutually agreed. Enkay Technologies will periodically audit the efficacy and competence of the Business Partners' Sales / Service team.
- 9 Training : The Business Partner's Sales / Service personnel will be trained by the Company on product.  
Product Training (Sales) - 2 trainings per year.  
Technical Training per year- free for 2 persons per year. Any additional technical training will be charged at Rs.10,000/- per person. However boarding / lodging, to and fro travel expenses / incidental charges will be borne by Partner.
- 10 Manual : One set of Manual will be provided in CD form.
- 11 Targets / Stock planning : Annual Sales Targets will be mutually discussed and agreed by the Company and Business Partner at the time of appointment which will be broken up monthly. The Business Partner is expected to ensure adequate stock levels of popular models at all times, the value of which should not be less than 75% of the agreed monthly targets. The monthly stock order should reach the Company latest by 15th of each month for billing with same month.
- 12 Prices : Prices will be as per Company's Price List prevailing at the time of dispatch.



GLOBAL CONVERGENCE



- 13 Sales Promotion / Advertising : The Company will reimburse to the Business Partner 50% of the advertising expenses , the total value of ad expense amounting upto 2% of the total billing achieved by partner per annum. The sales promotion plan and ads need prior approval in writing from the Enkay management. This budget is applicable for partners whose cumulative invoices amount over and above 25 lakhs per annum
- 14 Competitive Agencies : It is understood that the Business Partner will not handle competitive lines which will affect Company's business directly or indirectly.
- 15 Discontinuation : The dealership agreement can be discontinued by giving two months from either side. There is no obligation on Enkay to takj back any material from partner's inventory after the expiry of agreement period.
- 16 Marketing : Business Partner has to Log-in the case with Branch head / Regional head.

Note : Our engagement guideline may undergo change time to time to accommodate business dynamic related changes.



## BUSINESS PARTNER AGREEMENT

Articles of Agreement made on this \_\_\_\_\_ day of \_\_\_\_\_ by & between ENKAY TECHNOLOGIES (INDIA) PVT. LTD., a company incorporated in India under the Indian Companies Act 1956 and having its registered office at Enkay House, Bhima Vaitarna Complex, Sir Pochkhanawala Road, Worli, Mumbai 400 030 (hereinafter referred to as "ENKAY", which expression shall, unless excluded by or repugnant to the subject or content hereof include its successors, affiliates and legal assigns)

And

M/s \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Identified Business Partner", which expression shall, unless excluded by or repugnant to the subject or content hereof include its successors, affiliates and legal assigns), collectively referred to as "the Parties".

The Parties agree as follows:

### 1. Definitions

Capitalized terms used in this Agreement, unless defined specially elsewhere in the text of this Agreement, shall have the meanings specified in this Section 1.

Database: The term the "Database" means the ENKAY database containing the information regarding the Products and Services that the Business Partner may order, including the ENKAY equipment ordering codes and service codes for such Products and Services and the prices that Business Partner will be charged for such Products and Services. The database and any changes thereto are incorporated herein by reference.

End-User: The term "End User" means a third party (including the Business Partner) that purchases, leases or rents Products from the Business Partner for use by such third party in the ordinary course of its business in the Territory and not for resale, sublease or sub rental.

Firmware: The term "Firmware" means any software (and any storage media therefore) embedded or recorded in a permanent or semi-permanent form in or furnished with Products.

Comment [APT1]: I presume we would be dealing at the package level, hence components would not be essential. Service to confirm, how we are planning to offer warranty support.



**Marketing Materials:** The term "Marketing Materials" means brochures, advertising copy, press releases, sales presentation materials, marketing guides, customer testimonials, and competitive and sales tactics information.

**Product:** The term "Product" means the ENKAY equipment models and related peripheral equipment listed in the Database, consisting of one or more Products components as determined solely by ENKAY.

**Product Component:** The term "Product Component" means an item or part of equipment identified by a ENKAY equipment code.

**Related Documentation:** The term "Related Documentation" means all materials (other than Software) in printed or written form related to the use of Products or Product Components, excluding Marketing Materials.

**Services:** The term "Services" means installation, testing, training and maintenance services, including End User warranty services, furnished to End Users in connection with Products.

**"Service Policy"** means the policy of ENKAY with regard to Services to be provided for the Products by all including the Business Partners.

**Software:** The term "Software" means a set of instructions or other information in any form that controls in whole or in part the operation of a Product.

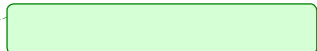
**Territory:** the term "Territory" means the geographic area agreed between ENKAY and the Business Partner (as per Annexure 1), within which the Business Partner can conduct the business under this Agreement to the satisfaction of the service parameters of ENKAY.

**Carrier/Designated Carrier/Approved Carrier** means a private or governmental service provider approved or designated and notified use for purposes of shipment, for transactions covered under and related to this Agreement.

## 2. Appointment

ENKAY hereby appoints Business Partner, and the Business Partner hereby accepts appointment to be an authorized non-exclusive ENKAY Business Partner for the limited purpose of marketing to End Users in the Territory in accordance with the terms and conditions of this Agreement. Business Partner acknowledges that it has delivered to ENKAY (i) A Business plan, setting forth, among other things, the action proposed to be taken in contemplation of this Agreement and (ii) all application, background or similar materials relating to Business Partner's past and present business and operations, and that ENKAY had relied on such plan and materials in entering into this Agreement. ENKAY expressly reserves both the right to contract with others to market and/or service the Products in the Territory and to engage directly in marketing Products or providing Services for such Products.

Comment [APT2]: Clause inserted





The Business Partner does not either directly or indirectly get any right to market any ENKAY Product other than those listed in the Database.

Business Partner shall have no right to authorize others to market, resell or service the Products, and any such authorization or attempted authorization shall be void and without effect.

The Business Partner under this Agreement shall at all times be an Independent Contractor of ENKAY. This relationship between ENKAY and the Business Partner shall not be construed as a partnership as under the Indian Partnership Act, a franchiser and a franchisee, joint venture or a principal and an agent.

Business Partner shall not have any authority to assume or create obligations on ENKAY's behalf and the Business Partner shall not take any action that has the effect of creating the appearance of its having such authority. The obligations and liabilities of the Business Partner's employees will always remain with the Business Partner and shall under no circumstances get transferred to ENKAY.

### 3. Responsibilities

1. Business Partner shall market the Products identified in the database. The database, including the list of Products and Services and prices contained therein, may be changed upon prior notice to Business Partner.

2. Business Partner shall devote its best efforts to promote market and sell the quantity of Products Business Partner forecasts and shall conduct its business in a manner that reflects favorably on the quality image of ENKAY and its Products.

3. Business Partner shall provide all after-sales services, including warranty and post-warranty Services required by the End Users in the territory as per mutually agreed terms stated and defined in the Service Policy. ENKAY shall advise the Business Partner in developing appropriate support arrangements for such End Users.

4. Subject to the specific provisions made in this Agreement in clauses 15 and 16 the Business Partner shall provide the type and level of sales and support capabilities specified from time to time by ENKAY for Products marketed in the territory, including training End Users in the effective use of Products and providing relevant instructional material.

5. Business Partner shall maintain a staff of adequately trained and competent sales personnel, knowledgeable of the specifications and features of the Products. Such personnel shall be made aware of the confidential nature of this information and the Business Partner shall cause such personnel to agree in writing to observe the restrictions on use of information.

6. Business Partner shall be responsible for directly or indirectly providing all Services and training associated with Products.

7. Business Partner shall maintain and make available to ENKAY on request an accurate and complete list of the End Users (with relevant addresses, including the address at which the installation or utilization of the Products or Services is made) to whom the Products and Services have been offered

by the Business Partner. This list must also provide information on the details of the Products furnished and the transaction date.

8. Business Partner shall also:

a.) keep accurate accounts, books and records relating to the business of Business Partner with respect to Products and Services in accordance with generally accepted commercial and business accounting principles and practices sufficient for ENKAY to ascertain Business Partners compliance with its obligations under this Agreement.

b) Provide ENKAY reasonable access to Business Partners premises during normal business hours to inspect and verify Business Partners performance of its obligations under this Agreement, including the right to inspect and audit Business Partners records solely relating to Products transactions, inclusive of Business Partners sale prices. Business Partner shall be responsible for maintaining an adequate supply of spares, subject to consultation with ENKAY, to maintain the Products in serviceable condition in the territory throughout the term of this Agreement and for a period of five years thereafter.

c) The Business Partner should submit on a monthly basis the record of unsold stocks lying with him and the tentative date for disposal.

9. If the Business Partner or its affiliates deals in Products or Services with any other entity other than ENKAY which have resemblance of any nature with the Products or Services covered in this Agreement, it is the absolute responsibility of the Business Partner to ensure that there the Business Partners projects the correct image of ENKAY and does not convey to any person or body issues which are defamatory or undermine the Products or Services of ENKAY. ENKAY has the sole discretion to decide whether the Business Partner is responsible for the above and can terminate the Agreement immediately without any notice, irrespective of what is mentioned in this Agreement. The decision of ENKAY is final and binding and is outside the scope of any arbitration proceedings.

10. The Business Partner is entitled to sell add-ons to only those customers to whom the original equipment was sold by the Business Partner.

11. In case Business Partner ceases to be our Partner then he shall be liable to settle all outstanding dues to ENKAY (including settlement of all outstanding issues relating to the Agreement).

#### 4. Term of Agreement

This Agreement shall become effective as of the date first set forth above (Effective Date) and shall continue in effect up to \_\_\_\_\_ unless earlier terminated by either party as provided for in this Agreement. This Agreement may be continued in effect by express mutual agreement of the parties upon at least three (3) months prior written notice by either party before the expiration of the initial term or any extension thereof. The term of this Agreement shall not be changed except by any additions or deletions to the Database done with mutual consent of the parties, in writing, while this Agreement is in effect.

#### 5. Product Details



ENKAY Limited will be supplying its range of products to the Business Partners through its technological tie ups/joint ventures with leading telecom giants in respective product categories. The products currently available to the business partners are given below:

Stock and Sale Category

- 1.
- 2.
- 3.
- 4.
- 5.

Non-stocking items

Items under Non-stocked items, however, can be stocked by Business Partners based on business situation, market conditions and their business proposition, after mutual discussion and agreement with concerned Branch Head / General Manager / Regional Director and Channel Manager.

The details of the models are as furnished in the respective literatures. Other telecom end-user products will be introduced from time to time depending on market needs. Products allocated for Business Partner portfolio, under 'stock and sale' category, would not be sold by direct sales team of ENKAY unless decided otherwise by ENKAY. All the leads would be passed on to the Business Partner/s through Regional Channel Sales Manager.

Business Partners shall be free to sell basic applications / Add-ons that are compatible with the Products to their own customers in their area of operation. Following customers / segments shall be excluded for direct handling by ENKAY:

1. ENKAY customers
2. Large MNC / Hotels / Banks directly handled by ENKAY
3. Large Defence orders

Business Partners would not be allowed to sell to above defined accounts unless or otherwise agreed and permitted by concerned Branch Head / General Manager / Regional Director of ENKAY.

The details of the models are as furnished in the respective literatures.

#### 6. Reselling

The 'stock and sale' procedure will be adopted for all items unless specified. The Business Partner would place orders on ENKAY and lift systems in his own name and subsequently resell them to his customers. ENKAY would bill the Business Partner and the Business Partner would raise the customer invoice. Normally, no deviations from this will be permissible. However, when such indirect billing is not possible for some reason, special permission in writing will have to be obtained from Branch Head / General Manager / Regional Director of ENKAY. Business Partner would be paid ORC at the prescribed percentage by ENKAY from time to time. The Business Partner Sales Executive at the

nearest ENKAY office will approve for specific customers against their specific orders. ENKAY would in such cases directly bill the customer and these cases shall be dealt as below:

Wherein the orders are of such nature:-

- 1) CT3 cases, where order shall be on ENKAY
- 2) Case through Business Partners however customer wants to place order only on ENKAY

Over Riding Commission (ORC): ORC commission on total order value (excluding Excise Duty & VAT / Sales Tax), based on involvement of Business Partner in the case and also the value of the order will be considered. In no case it should exceed 4% which is maximum when Business Partner is able to close order with minimal support from ENKAY. Concerned Branch Head / General Manager / Regional Director shall decide the percentage of ORC on case to case basis. In case of deviation, approval of Head Office is must. Approval of the discount level shall be as done in case of direct sales. All adjuncts and bought out items like battery, battery charger etc. should be excluded while calculating ORC. The total sale shall be counted towards Business Partners achievement.

#### 7. Annual Targets

At the time of signing the Business Partner Agreement, annual target shall be decided between the Business partner and ENKAY by mutual consent on the off take committed in a financial year. Agreed mutual target for the financial year and its quarterly break up shall be part of this Agreement as per Annexure I.

#### 8. Initial Stock

Business Partner agrees to pick up initial stock as per guidelines for Aspila / Topaz.

#### 9. Minimum Rolling Stock

The Business Partner agrees that the Minimum rolling stock to be maintained by each Business Partner at any given point of time for:

A / B cities : Rs. -----lakhs

C / other cities : Rs. -----lakhs

At the time of Audit, if the stock is not found as per above, the same has to be ordered by Business Partner immediately with in one week. Business Partner has to clear payments as per agreed payment terms. Until the payment is received, ENKAY will have lien on the goods.

Business Partner has to insure the stocks and proof of Insurance should be provided to ENKAY.

#### 10. Demonstration Unit



The Business Partner must have one demonstration unit along with terminal equipments for conducting demo to all prospective customers at any given point of time. In the event of selling the demo machine, Business Partner shall ensure to allocate another machine for demo.

11. Orders

Business Partner shall submit all orders at ENKAY's concerned regional / branch office hereunder electronically (as applicable) or through courier / facsimile in the specified formats favouring ENKAY, í

It is a pre requisite that the Business Partner should have Internet / e-mail connectivity at all times during the validity of this Agreement. Any additional facilities required to be installed by the Business Partner will be informed by ENKAY from time to time.

An order submitted by Business Partner shall contain the information specified by ENKAY from time to time, shall be in English, and shall include at a minimum the following: (a) adequate identification of this Agreement; (b) a list of the Products or Products components covered by the order specifying, attaching or referencing the price, model number, description(s) , Quantities and ordering codes; (c) Business Partner's desired delivery date, if other than ENKAY's standard interval;(d) the freight forwarder and/or Carrier specified by Business Partner and approved by ENKAY (Carrier); (e) the address to which the order shall be sent; (f) CST/LST number. Business Partner shall use the Order Detail Form provided by ENKAY. This form includes all information required to process an order. If an order is incomplete, ENKAY shall intimate the Business Partner and if the Business Partner does not send the complete information within the next 3 working days, then the incomplete order form shall stand rejected

All Orders submitted by Business Partner shall be deemed to incorporate and be subject to the terms and conditions of this Agreement. All other terms and conditions contained on any order form or correspondence originated by Business Partner are rejected and shall have no effect.

Except for Business Partner's right under Section 22, Business Partner has no right to return the Products in order to obtain a refund of the purchase price or a stock credit from ENKAY.

12. Termination of Orders

12.1 Business Partner shall not suspend performance or issue a hold order on order accepted by ENKAY, in whole or in part , without ENKAY's prior written consent. The duration of any such hold or suspension of performance to which ENKAY consents shall not exceed sixty (60) days. Any order held for more than sixty (60) days will be considered by ENKAY as having been terminated and will be handled in accordance with Section 12.2.

12.2 Business Partner shall not terminate any order accepted by ENKAY in whole or in part, without ENKAY's prior written consent. If ENKAY consents to a request to terminate all or a portion of any



Business Partner order , Business Partner agrees to compensate ENKAY for such action as follows: (I) for specially manufactured Products, Business Partner's liability shall include the price of finished Products delivered or held for disposition and, for unfinished goods, Business Partner's liability shall include the actual costs incurred by ENKAY in manufacturing material (including procurement of any components), any other incurred costs including contractually committed but as net unpaid expenditures, a reasonable allocation of general and administrative expenses, as determined by ENKAY, plus FIFTEEN percent of the amount of the order terminated as a cancellation fee; and (ii) for ENKAY standard Products, Business Partner's liability shall be determined by applying the following percentages to the value of the order cancelled:

Time of receipt of cancellation notification by ENKAY prior to scheduled delivery date:

<u>DAYS</u>	<u>PERCENTAGE</u>
over 21 Days	0%
8 - 21 Days	50%
7 Days or Less	100%

In the event Business Partner first requests a suspension of performance or a hold and ENKAY consents to same and Business Partner subsequently requests termination of all or part of an order and ENKAY consents to same, Business Partner would be subject to the charges in Section 12.2 .

12.3 Cancellation or termination charges provided in this Section are payable within sixty (60) days of receipt by Business Partner of the invoice therefor.

### 13. Minimum Order Commitment

Business Partner shall be required to submit to ENKAY in the first week of each quarter during the term of this Agreement a forecast of Product orders listing "Numbers of Systems" by Products type and anticipated line size and "Total Order Revenue" for the quarter.

ENKAY and the Business Partner have identified the need to keep the minimum order commitment to be 5% of the total annual target (excluding excise duty & sales tax), and have therefore mutually agreed to the same. It means, the value of every order placed by Business partner on ENKAY shall be equal to or more than 5% of his committed annual target. This Commitment level will be reviewed every 3 months by Business Partner and ENKAY. Failure to order Products to the minimum order commitment level, for two consecutive quarters, will be a valid ground for termination of this Agreement.

### 14. Training

ENKAY will offer training courses in following categories

1. Sales / Product trainings

## 2. Service / Support trainings

All the trainings shall be oriented towards sales and service operations. It would provide better insight on each Products and upgrading suitable skills of the engineers interacting with the customers. It is mandatory for the Business Partner to have all the engineers technically trained and ENKAY certified. Technical & Service Support trainings shall be provided by Training team at ENKAY Training Centre on chargeable basis. Training charges shall be @ Rs. ----- per person per training programme. The training charges payable to ENKAY may be revised from time to time. Trainings shall be conducted as per quarterly training schedule published by Training which includes boarding / lodging, training material, technical literature and fee for training faculty. Business Partners have to manage to/from Train/Air fare, local conveyance, insurance and any other pocket expenses of trainees.

ENKAY shall also provide, upon request from Business Partner and at charges prescribed by ENKAY, training on Products and Services. Training charges shall be subject to change upon thirty (30) days notification from ENKAY to the Business Partner.

Training on future upgrades / releases shall be conducted as and when introduced. All the trainings would be chargeable. Certificate of certified sales and service engineers of ENKAY shall be given on clearing exams.

## 15. Trained Manpower

It is mandatory for Business Partners to keep trained manpower dedicated for Sales / Service with them at any given point of time as per requirements below:

A / B cities

Minimum 3-5 ENKAY trained Sales personnel

C / other cities

Minimum 2-3 ENKAY trained Sales personnel

Availability of Trained / certified Sales & Service manpower would be checked and verified during Channel Audit process every month. Involvement of ENKAY person in the selection process of Sales and Service team is mandatory. ENKAY may extend support in selection of right candidates as Product being high value Products, needs exceptionally good candidates with excellent communication and presentation skills.

Violation of this would attract serious consequences in terms of support from ENKAY. Non adherence to man power requirement conditions for 3 consecutive monthly Channel Audits would make Business Partner liable for termination of Partnership.

## 16. Non-disclosure Agreement

The Business Partner shall not disclose to any third party, without the prior written consent of ENKAY, or use for any purpose other than the performance of its obligations under this

Agreement, any confidential information concerning the Contract Products or business affairs of ENKAY (including but not limited to, prices, discounts, terms and conditions of sale, customers, business affairs, Contract Products or Contract Product specification) which it acquires or develops in the course of its transaction with ENKAY. Similarly any confidential information / Knowledge shared by Business Partner and ENKAY, while operating this agreement should not be disclosed by ENKAY to any other party without prior approval of Business Partner.

The provision of this clause will be applicable to all the employees, officers, agents, affiliates, associates, directors, contractors, partners etc. of the Business Partner.

A separate Non-disclosure Agreement is attached as Annexure II.

#### 17. Infrastructure Requirements

It is mandatory to have following items available:

- Lap top for presentations
- PCs
- Internet / Fax / E-mail
- Demo equipment

#### 18. Monthly Reports

The Business Partner must provide monthly reports to ENKAY covering the following aspect of sale made

- i) Customer Name with full Address, Contact Person , Telephone No , Fax No , Telex No etc.
- ii) Quantity of different Products sold
- iii) Price of sale
- iv) Date when supplied
- v) Date when commissioned
- vi) Start of commercial warranty

Over & above this, Business Partner has to submit Stock & Funnel information as per formats released by ENKAY and available in Business Partner Excellence Book.

Failure to provide such reports would have effects in terms of support from ENKAY.

ENKAY reserves the right to examine the Business Partners' books at any time to ascertain quantity of goods sold as well as the price at which the goods are sold.

#### 19. Delivery and Title



All Product deliveries shall be made to ENKAY's Approved Carrier within 3-4 weeks for stocked items and 8-10 weeks for indented items or items which are not available in stock, after ENKAY has accepted and confirmed Business Partner's order for such Products. If, however, in the three months preceding a particular order, Business Partner has deviated by more than ten percent (10%) for the number of Systems from Business Partner's forecast for those months, the delivery interval will be longer.

Title (except as provided in section 45) and risk of loss or damage to the Products shall pass to Business Partner at the time ENKAY delivers possession of the Products to Business Partner's Designated Carrier / the Approved Carrier. Claims for shortages and merchandise damaged during shipment must be filed with Carrier by Business Partner. ENKAY will cooperate with Business Partner, but will not assume responsibility for the processing or collection of claims. No deductions from invoices for claims against Carrier will be allowed.

#### 20. Product or related documentation changes

ENKAY may at any time, without advising Business Partner, make changes in the Products, Products components or Related Documentation or modify the drawings and specifications relating thereto, or substitute Products, Products components, related documentation or spare parts of latest design, provided such changes, modifications or substitutions under normal and proper use do not adversely impact upon permission to connect, Products form, fit or function, or are recommended to enhance safety or for environmental considerations. Changes, modifications or substitutions that (i) adversely impact upon permission to connect or (ii) impact product form, fit or function or product safety will only be undertaken by ENKAY upon consultation with Business Partner.

Business Partner shall not make or permit any third party acting on its behalf to make any changes, modifications or substitutions to the Products.

#### 21. Permission to connect

Business Partner shall be responsible for obtaining permission to connect. The Business Partner agrees to cooperate with the End User to help him obtain all required Permissions to Connect in accordance with the applicable legal requirements in the territory.

#### 22. Prices / Credit notes

ENKAY's prices are in Indian Rupees and are set forth in the Database. List prices include ENKAY's standard commercial packing and marking.

Such packaging shall be adequate to prevent damage during normal transportation, handling, and storage. Prices exclude local taxes & duties, octroi etc.

Any upward statutory variation in duties and taxes will automatically result in increase in prices to an extent to be solely decided by ENKAY.

If the Business Partner raises any claim for credit, only the Branch Head / General Manager / Regional Director of ENKAY is authorized to approve the credit note. Approval for any credit claim by any authority will not create any liability on ENKAY. In case the designated authority leaves the Services of ENKAY a list of credits approved will be jointly prepared to ascertain the claims.

### 23. Advertising & Sales Promotion

ENKAY may provide adequate advertising and media support to Business Partners. National campaign in newspapers and magazines will be carried out by ENKAY to build specific brands and company image as considered appropriate.

However, there are promotional requirements, which are specific to Business Partner locations and products. These advertisements/promotions will be planned with Business Partners locally. The expertise available from ENKAY for promotional efforts like road shows, seminars/presentations, direct mail campaigns, exhibitions etc., will be accessible to Business Partners. The Business Partner and the local ENKAY team will carry out these activities. ENKAY will participate in all these activities and cost to be shared with the Business Partner. ENKAY will fund maximum 1% of the yearly target as long as Business Partner shares the equal amount. In case Business Partner has not achieved the quarterly sales targets, he would be re-imbursed the promotional cost only after achieving agreed level of business in the same financial year at the sole discretion of ENKAY.

### Right to publicize

The Business Partner hereby authorizes ENKAY to use and / or display the name and logo of the Business Partner in press releases / advertisements, for the purpose of undertaking promotional and public relation activities including issuing and publicizing the news releases on significant wins to the media, analysts, public at large, etc. and for marketing collateral, including but not limited to brochures, circulars, cut sheets, pamphlets, websites, advertisements, promotional materials, etc.

### 24. Terms of Sale and Payment

For payment terms, please refer to Engagement Guidelines.

Provisions with respect to VAT shall be applicable whenever introduced & implemented.

### 25. Costs and Expenses After Passage of Title

After passage of title, as provided in Section 19 of this Agreement, Business Partner shall be responsible for all taxes, duties and other governmental charges, however designated, and all transportation, handling, brokerage and other costs and expenses.

### 26. Notices

All notices required or allowed to be given under this Agreement shall be in writing or electronically transmitted (as applicable) and shall be in English, addressed to the parties as follows, or to such other

address designated by one party in writing to the other party. Notices shall be deemed to be given after 15 days of the posting of the notice by Registered post / courier etc.(provided proof of the same is available).

To ENKAY: ENKAY

Comment [APT3]: Re-Designation

To BUSINESS PARTNER: \_\_\_\_\_

Comment [APT4]: Re-Designation

#### 27. Firmware and License

No title or other ownership rights in the Firmware or any copy thereof shall pass to Business Partner under this Agreement. Business Partner agrees that it shall not alter any notices on, prepare derivative works based on, or reproduce, disassemble or decompile any software embodied in Firmware recorded in the Products.

#### 28. Use of Information

All information which is marked with a restrictive notice or designated as proprietary or information which Business Partner knows or should know is being disclosed on a confidential basis and which is furnished by ENKAY under or in contemplation of this Agreement shall remain property of ENKAY and shall be returned to ENKAY upon request.

Unless ENKAY otherwise agrees in writing such information

- (i) shall be treated in confidence by Business Partner and used only for purposes of its performance under this Agreement.
- (ii) shall not be reproduced or copied in whole or in part except as necessary for use as authorized herein.
- (iii) shall together with any copies thereof be returned or destroyed or may if in the form of software or firmware recorded on an erasable storage medium, be erased when no longer needed or when this Agreement terminates whichever occurs first.

The above conditions do not apply to any part of the information which

- (i) is known to Business Partner free of any obligation to keep in confidence
- (ii) is contained in a document generally available to the public in the territory
- (iii) is generally known in the industry other than as a result of improper action by Business Partner.
- (iv) is wholly and independently developed by Business Partner.
- (v) is part of knowledge in the industry or otherwise available due to dissemination or availability in the public domain



Business Partner shall not disclose any of the terms and conditions of this Agreement without prior written consent of ENKAY.

The above would be applicable even after the expiry of this Agreement. Any breach of the above by the Business Partner either directly or indirectly would give ENKAY the right to claim damages or any loss incurred by ENKAY

Comment [APT5]: This clause has been inserted

The provision of this clause will be applicable to all the employees, officers, agents, affiliates, associates, directors, contractors, partners etc. of the Business Partner.

#### 29. Related Documentation

ENKAY shall furnish to Business Partner related documentation in the English language. Business Partner shall have the right at its own expense to reproduce and translate into any of the Indian language related documentation, provided that each copy or part thereof includes ENKAY's copyright and other notices along with an acknowledgment of ENKAY's permission to copy and further provided that any distribution of Related documentation shall be solely to support Products purchased hereunder.

Business Partner assumes all responsibility for the accuracy of the translations.

#### 30. Trademarks and Markings

1. ENKAY grants Business Partner permission to utilize certain ENKAY designated trademarks, insignia and symbols (öMarksö) in Business Partner's advertising and promotion of the Products provided such use conforms to ENKAY's standards and guidelines from time to time in effect and is with the prior approval of ENKAY. Business Partner shall not do business under any mark or any derivative or variation thereof, and Business Partner shall not directly or indirectly hold itself out as having any relationship to ENKAY or its Affiliates other than as an öauthorized ENKAY Business Partnerö or other ENKAY approved term. Except as provided in Section 28, Marks may only be used by Business Partner to advertise and promote the Products during the term of this Agreement. All Business Partner-initiated advertisements, catalogs, promotions or similar material using Marks or any reference thereto shall be subject to pre-publication review and approval, in English language form, by ENKAY. Marks shall not be used by Business Partner in any way to imply ENKAY endorsement of Products and Services not furnished hereunder. Business Partner will not alter or remove any Mark or other markings applied to the Products without the prior written approval of ENKAY.
2. All the above shall apply equally to the intellectual property rights vested in the Products that may not be origin from ENKAY but which ENKAY is authorized to sell, service or otherwise deal with or is otherwise not part of the Marks above.
3. The right and the extent of use of the goodwill related to use of the Marks or other the intellectual property rights attached to the Products, will always accrue to the benefit of

ENKAY and never in favour of the Business Partner.

4. The Business Partner undertakes not to seek registration of any form of an intellectual property right that are same, similar or in any way to be confused with the Marks and/or associated with the Products.
5. The provisions of this clause 30 to the extent that they are relevant after the expiry or termination shall survive expiry or termination of this Agreement.

### 31. Limitation of Liability

The liability of ENKAY or its Affiliates to Business Partner for any claims, losses, damages or expenses from any cause whatsoever (including acts or omissions of third parties) regardless of the form of action, whether in contract, tort or otherwise, shall not exceed the lesser of (i) the direct damages proven or (ii) the repair, replacement costs or purchase price (excluding taxes and local levies) of the Product or Product Component that directly gives rise to the claim. In no event shall ENKAY or its Affiliates be liable to Business Partner or any other person or entity for any incidental, reliance, consequential or any other indirect loss or damage (including lost profits or revenue) arising out of this Agreement. A grievance or complaint against ENKAY or its affiliates must be commenced within three (3) months of the cause of action arising. This section shall apply and remain operative notwithstanding the failure of an exclusive remedy. (iv) The Business Partner shall keep ENKAY indemnified against third party actions that arise due to the delay, fault or negligence of the Business Partner. Further the Business Partner shall represent in ENKAY at its own cost in such litigations.

The above would be applicable even after the Agreement has ceased to exist and under all cases the liability of ENKAY cannot exceed the value of the equipment sold.

### 32. Installation and Commissioning

Business Partners will be required to carry out complete installation and commissioning of the system. This would include all aspects starting from site preparation to eventual handing over and training on system usage and Administration. Any liaisoning with Govt. Deptts. for connection of CO/Tie/DID lines etc., will be the responsibility of Business Partner along with customer.

On completion of installation, the copies of Installation & Commissioning (ITC) certificate duly filled in, signed by the customer, is to be retained with the Customer, Business partner and local ENKAY office.

### 33. Warranty

Please refer to the Engagement Guidelines.

For multi-locational orders, where the product is required to be installed/re-installed in a location outside the Business Partner's territory, Business Partner booking the order has to work out the arrangement with the other Business Partner in whose area installation is planned. ENKAY will not be

liable for any disputes arising out of payments between Business Partners. In all above cases, system value is taken as invoice value including excise duty but excluding sales tax, octroi, and insurance and installation charges.

All customer calls/complaints during warranty period will be attended to by the Business Partner. Details pertaining to the call/complaint with reference to fault, rectification, etc., will be filled up in the Customer call cum service form, duly certified by the customer. Business Partners are required to print all forms required as per the ENKAY format. Business partner shall submit a consolidated report of the calls attended, monthly to local ENKAY office.

#### 34. Annual Maintenance Contract (AMC)

After the expiry of the warranty period, servicing of the products will be subject to the customer entering into the Annual Maintenance Contract (AMC). The terms and conditions shall be as per ENKAY AMC contract format. Business partner should adhere to same terms and conditions. The AMC charges shall not be more than 12.5% of total order value in city limits and for normal working hours. The customers who have not entered into AMC after the expiry of warranty period will be charged for the service calls as well as repair of the systems. Per visit charges shall not be more than Rs. 6,000/- for in-station and Rs. 8,500/- for outstation calls. Cost of spare repairs will have to be borne by the customer. All taxes / statutory levies will be charged extra.

#### 35. Revenue Sharing

As per Engagement Guidelines for products  
HD600HD, X POINT HD, XPOINT LT

#### 35. Technical Escalation

Business partner shall log the formal escalation with service coordinator either thru Telephone or Internet channel self service. The closure for same shall be done by channel AMT engineers after resolving the problem by RMI / telephonic support. If it is must & required to visit the site , it shall be decided by ENKAY engineer , as he considers suitable in the interest of early closure of call , however ENKAY engineer's site visits , if any , would be @ ----- per installation visit and - ----- per outstation visit.

#### 36. Spares Stock/Repairs/Defective Material Handling

The Business Partner is required to invest in and carry adequate standby equipment as spare inventory with him to meet his service requirements as per norms specified by ENKAY from time to time for each product family. Business Partner agrees to buy and stock separately a set of standby equipment. Spares stock is to be used for maintenance purposes only. These cannot be used for product up gradation or for any other purpose.

The Business Partner is not expected to carry out any level of repair. The defective units are to be submitted at the local ENKAY office with a request for repair along with FRC (Fault report card) as per standard format of ENKAY).

The Business Partner will be liable for all costs, insurance etc. and will be responsible for all losses / damages etc. in respect of the defective modules sent by the Business Partner for repairs.

#### 37. Manpower Requirements

It is expected that the Business Partner confirms to the below specified norms as suggested by ENKAY in terms of his manpower resources dedicated exclusively to ENKAY Business Partnership service operations.

CLASS 'A' CITIES : Min. 5 ENKAY Certified Service Engineers and 1 Service Co-ordinator

CLASS 'B' CITIES : Min. 3 ENKAY Certified Service Engineers and 1 Service Co-ordinator.

CLASS 'C' CITIES : Min. 2 ENKAY Certified Service Engineers

They should be fluent in English and the local language. Service engineers should be at least qualified 3 yrs full time Diploma engineer in electronics / telecommunication engg. And have 2-3 years



GLOBAL CONVERGENCE

relevant experience in Enterprise telecom products. ENKAY shall need to be involved in final selection process.



### 38. Infrastructure

The Business Partner should have the following:



GLOBAL CONVERGENCE



- a) PC (Pentium IV and above with E-mail and Internet), Telephone, Fax facilities, pager/mobile for service engineers.
- b) Space for stocking spares
- c) A tracking system for customer calls, spares movement etc.. d) Adequate no. of Service/Tool Kits.
- e) Business partner should have a full fledged RMI set up in his office and should be closing appropriate calls through this.

#### 39. Technical Support /Assistance

In order to ensure that the quality service is provided to the customer, ENKAY will provide the following:

- 1) Technical certification training for every Product being sold by Business Partner. The charges shall be borne by the business partner.
- 2) Field level telephonic support.
- 3) Product & software modification details aimed at improvement of product performance, Technical bulletins and manuals for handling customer complaints. ENKAY shall give free of cost all the necessary required information. Additional copies of training documents / CDs will be at extra cost.

#### 40. Service Norms

We operate in a highly service oriented industry, ENKAY places a high degree of emphasis on customer orientation. It expects its Business Partners to match up to the same standards in meeting customer expectations of service. Following norms need to be used as benchmark for measuring the internal service effectiveness.

##### Maintenance Parameters

- |  |             |
|--|-------------|
| 1. Breakdown response time (Measured as per office hrs)  | 4 hrs       |
| 2. Average resolution time (Response time + Repair time) | 8 hrs       |
| 3. Preventive maintenance visits                         | 2 per annum |

#### 41. Feedback Reports

The following reports are to be submitted by the Business Partner as per frequencies indicated below: -

- A. Installation & Commissioning Report (I&C) along with installation check list - on every installation.
- B. Consolidated Service Reports - on 7th of every month.

Violation of these terms would automatically call for a review of the Business Partnership.

#### 42. Territory

Business Partner has to sell the Products only within the geographical limits agreed between ENKAY and the Business Partner as per Annexure I so as to ensure satisfactory level of service to end-user and under no circumstance is authorized to sell outside the territory, until and unless a written permission is obtained for a specific case by the Business Partner from concerned ENKAY office. This Agreement

will automatically get cancelled in case the Business Partner sells these systems outside the defined Territory.

#### 43. Non Exclusivity

- a) ENKAY reserves the right to contract with others in the territory to market and /or service the Products in the territory and to engage directly in marketing Products or providing Services for such Products.
- b) ENKAY reserves the right to supply directly to any customer it may so desire without assigning any reasons to the Business Partner and without paying any commission to the Business Partner.

#### 44. Termination of Agreement

This Agreement may be terminated (a) by ENKAY, in its sole discretion, upon sixty (60) daysø prior written notice if Business Partner fails to meet any commitments submitted under this Agreement , including but not limited to the minimum order commitments set forth in Attachment or has defaulted in the performance of its obligations under this Agreement or has materially breached this Agreement and such default or breach remains uncured for a period of fifteen (15) days following receipt of notice of such default or breach, or if any representation and warranty made by Business Partner hereunder shall not be true and correct as of the relevant publication date ;

(b) by ENKAY, in its sole discretion, upon twenty four (24) hoursø notice if Business Partner or any of Business Partnerø agents or employees are accused of committing a crime or illegal act or disclosing information when not authorized by ENKAY, or if Business Partner becomes insolvent or invokes as a debtor (or has invoked against it) any laws relating to the relief of debtorsø or creditorsø rights, or becomes involved in a liquidation or termination of its business, or if Business Partner appoints or attempts to appoint any unauthorized Business Partners of ENKAY Products; or (c) without cause by either party, if such party is not then in default under this Agreement, upon 60 daysø prior written notice.

Upon termination of this Agreement neither party shall be liable to the other, either for compensation or for damages of any kind or character whatsoever, on account of the loss by ENKAY or Business Partner of present or prospective profits on sales or anticipated sales, good will, or expenditures, investments or commitments made in connection therewith or in connection with the establishment, development or maintenance of Business Partnerø business, except that termination shall not prejudice or otherwise affect the rights or liabilities of the parties with respect to Products or Product Components sold hereunder or any indebtedness then owing by either party to the other.

If any of the sovereign entities or political subdivisions in the Territory enacts legislation relating to the relationship created by this Agreement which grants rights to Business Partner that are not granted by this Agreement or imposes obligations on ENKAY that are not imposed by this Agreement, this

Agreement shall at ENKAY's election terminate one day prior to the date such legislation becomes effective.

c) Over and above the cases mentioned above ENKAY reserves the right to terminate the Agreement for any reason by giving notice of 30 days to the Business Partner.

Comment [APT6]: This clause has been inserted

#### 45. Effects of Termination

Notwithstanding any other provisions of this Agreement, termination of this Agreement shall automatically accelerate the due date of all invoices to the effective date of termination. Upon such termination Business Partner shall (a) immediately provide ENKAY, at ENKAY's option, with the first right to repurchase any Products in transit to Business Partner or in Business Partner's possession or control at a repurchase price equal to the lower of the net price paid for such Products or the price payable for Products comparable to the Products; (b) discontinue all use of Marks, provided that if ENKAY does not repurchase Business Partner's remaining inventory of Products, Business Partner may continue using such Marks as authorized in this Agreement for an additional sixty (60) days; (c) remove and return to ENKAY, or destroy at ENKAY's request, all promotional materials supplied without charge by ENKAY; (d) return all information; (e) cease holding itself out, in any manner, as an ENKAY authorized Business Partner; and (f) notify and arrange for all persons who may identify, list or publish Business Partner's name as an ENKAY authorized Business Partner to discontinue the same.

#### 46. Force Majeure

In the event of any party being prevented, restricted or interfered in performance of this Agreement due to acts of God, acts of war, blockages, embargoes, sabotages, epidemics, revolutions, strikes, lockouts, floods, fire, major accidents, discontinuance of the Products/Services due to any reason by ENKAY Government restrictions or policies or other similar events of the same nature shall be excused provided notice given to the other party within 30 days of the occurrence and cessation of such event.

In case of occurrences of any of the events continuing beyond 30 days resulting in excusable delay as above the parties shall without delay meet to consult each other and try to find the appropriate remedy to the situation and to reach a Agreement and the parties so affected shall take all reasonable steps to avoid or remove such cases of non-performance.

#### 47. Disputes

A) All disputes or differences arising out of this Business Partner cum Business Partnership Agreement will be subject to the jurisdiction of Mumbai courts.

B) Any disputes and differences between the parties hereto of any kind whatsoever arising out of or in connection with or touching upon or incidental to this Agreement (including any dispute or difference in regard to termination or interpretation of this Agreement or any clause thereof arising there from or relating thereto) shall be settled amicably, in terms of the Indian Arbitration and Conciliation Act, 1996



and its subsequent amendments or statutory modification or enactment thereof from time to time. The venue of Arbitration shall be at Mumbai.

#### 48. Assignment

Business Partner shall not assign this Agreement, in whole or in part, without the prior written consent of ENKAY, and any attempted assignment shall be void. ENKAY shall have the right to assign this Agreement, in whole or in part, to any of its Affiliates or to any entity to which ENKAY may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with this, Agreement. Any such assignment by ENKAY shall include without limitation a merger, sale or transfer of assets, other transfer or control, by operation of law or otherwise.

#### 49. Survival of obligation

The respective obligations of the parties under this Agreement, which by their nature would continue beyond termination of this Agreement, shall survive such termination.

50. The Business Partner does not have any right to export the goods outside India either directly or through any third party. This would be considered as a breach of the Agreement liable to termination of the Agreement.

51. If due to any reason the goods sold by ENKAY have not been paid by the Business Partner, the first lien/charge on the goods will be of ENKAY irrespective of any other charge or rights created. ENKAY can take possession of the goods at any time at its sole discretion.

52. The Business Partner undertakes that it will not sell any Product (including software) or Services to any party / customer prohibited under the laws of India and that it will comply with all government laws, rules, regulations, orders and their restrictions, as may be in force in India.

53. The Business Partner agrees and undertakes that it shall not for a period of one year (1) after termination or expiry of this Agreement approach, advice or in any way deal with the End Customers of ENKAY in the Territory included in this Agreement.

54. Both the parties warrant and represent to each other that the transaction envisaged under this agreement is not in contravention of the provisions of the Prevention of Money Laundering Act, 2002, and in case any party, whether directly or indirectly, acts / has acted / would act in contravention of the aforesaid Act, the defaulting party indemnifies and keeps the other party indemnified against any and all costs, expenses, losses, damages or consequences that may arise out of that action / contravention.

#### 55. Entire Agreement



The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and shall constitute the entire Agreement between them concerning the subject matter of this Agreement and shall not be contradicted, explained or supplemented by any course of dealing or course of performance between ENKAY or any of its affiliates and Business Partner. There are no understandings or representations, express or implied, not expressly set forth in this Agreement, except those representations by Business Partner set forth in Section 3. This Agreement shall not be modified or amended except by a writing signed by the parties hereto. In Witness whereof the parties have caused this Agreement to be signed by their duly authorized representatives, effective as of the date written above.

ENKAY

BUSINESS PARTNER

By -----

By -----

Name-----

Name-----

Designation-----

Designation-----

Date -----

Date-----

ENKAY TECHNOLOGIES INDIA PVT LTD APPLICATION FOR BUSINESS  
PARTNERSHIP

SUBMITTED TO :

<p>ORGANISATION:</p>   <p>CITY:</p>
--



A7. Please fill in details of the main person who will be in charge of operations, if Business Partnership is offered.

Name : \_\_\_\_\_ Age: \_\_\_\_\_

Qualification : \_\_\_\_\_  
(Please mention institute)

Work Experience

Organization	Period	Designation	Nature of Job/Business

A8. What other activities, besides ENKAY TECHNOLOGIES INDIA PVT LTD Business Partnership, will this person look after :

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please provide the following details with reference to the office that will be used for ENKAY TECHNOLOGIES INDIA PVT LTD Business Partnership

B1. Total Office space (sq.m) : \_\_\_\_\_

B2. Space to be used exclusively for : \_\_\_\_\_

ENKAY TECHNOLOGIES INDIA PVT LTD Business Partnership (sq.m)



C. FINANCIAL INFORMATION

C1. Capital invested in the organisation which is applying for Business Partnership.

Fixed Assets : \_\_\_\_\_

Working Capital : \_\_\_\_\_

Equity, Reserves & Surplus : \_\_\_\_\_

Long Term Loans : \_\_\_\_\_

(Please attach Balance Sheet and P & L Statement for the last 2 Years).

Purpose

Amount of Investment

Purpose	Amount of Investment
_____	_____
_____	_____
_____	_____
_____	_____

C2. Bank Limits available with the organization

Type	Presently available	Can be enhanced to
Cash Credit		
L/C Limit		
Bill Discounting		
Stock Hypothecation		
Others		
Total		

C4 Central Sales Tax No. : \_\_\_\_\_ Date  
 \_\_\_\_\_

Local Sales Tax No. : \_\_\_\_\_ Date  
 \_\_\_\_\_

C5. Details of performance of last three years

	Year 3	Year 2	Year 1
Turnover :	_____	_____	_____

C6. Information about sister Companies (if any)

Name of the Company	1	2	3
Nature of Business			
Turnover Working			
Capital No. of			
Employees			
Functioning since			

D. CURRENT BUSINESS

D1. For current areas of activities, please provide the following information

Product Description	Principal	Turnover	Dealing Since	Territory	After Sales Service Provided

D2. If Telecom equipment forms a part of current activities, please describe these activities in detail. (include nature of activity, major achievements, expertise available, etc.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D3. What support services can you provide to the users in the areas listed below ?

	can presently provide	Plans to provide and by when
Installation & Cabling :	_____	_____
Feature Programming :	_____	_____
Training on Standard usage:	_____	_____
Maintenance & Repair :	_____	_____



E3 Please give details of the largest selling brands in your territory for the mentioned products (whichever applicable)

Product	Market Potential in Rs	Market Potential in Units	Brands and Manufacturers	Estimated installed Base (Nos.)
VC (Point to Point) SD				
VC (MP) HD				
VC (MP) SD				

F. PERSONNEL / EQUIPMENT PLANS

F1. Please give details of your employees who will be working primarily for the ENKAY TECHNOLOGIES INDIA PVT LTD Business Partnership.

Name	Designation	Age	Qualification	Experience	Activity

F2. Total manpower planned  
 Marketing : \_\_\_\_\_  
 Support :

F3. Details of equipments, like testing instruments, PCs etc., available / planned

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

F4. How soon can you become operational? \_\_\_\_\_ :

**G. REFERENCES**

G1. Please give two business references (name, address & phone number) with whom you have had previous business dealings. We would like to get a written reference from them.

1. \_\_\_\_\_

G2. List of major clients / customers / contacts

Name ( ) of the Organisation	Contact Person <sup>1</sup>	The context in which you have dealt with them

DE

I/we certify that the information furnished above is correct and complete to the best of my/our knowledge and belief. If at any time, I/we are found to have concealed any material information or given any false details, my/our appointment will be liable to summary termination without notice or compensation and my/our deposit will be liable to be forfeited.

Date: \_\_\_\_\_

Place: \_\_\_\_\_  
 \_\_\_\_\_



SIGNATURE OF  
PROPRIETOR

COMPANY SEAL &  
DIRECTOR / PARTNER /

BUSINESS PARTNER EVALUATION FORMAT

REGION/BRANCH

A. 1. Name \_\_\_\_\_ of \_\_\_\_\_ Organization

2. Name \_\_\_\_\_ of \_\_\_\_\_ Director/Partner/ Proprietor

3. Office \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Nos: 1 \_\_\_\_\_ 2 \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

- 
- B. Verification of documents asked for  
(tick against each box if documents submitted are complete and in order)
- Article of Association/Partnership Deed/Registration Certificate of Firm
  - Balance Sheet
  - Profit & Loss Statement
  - Solvency Certificate from Bankers, value should be equivalent to 50% of annual business

Reasons for non-submission, if any

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C. General Comments

Please gauge the applicant qualitatively on the following aspects on the basis of your discussions with the applicant as follows: -

(A- excellent; B - good; C- Not Satisfactory)

- a) Knowledge of the market
- b) Knowledge of the industry
- c) Product knowledge
- d) Understanding of key factors / efforts  
Needed for selling telecom equipment  
(as different from selling a PC, say)
- e) Financial Strength
- f) Office Infrastructure
- g) Manpower Resources
- h) Reputation

Name of Evaluator \_\_\_\_\_

Designation \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_