

**Agreement of Appointment and engagement, by SMC Insurance Brokers Pvt Ltd, for implementation of IRDAI guidelines/ Circular no. IRDA/Int/GDL/ORD /183/10/2015 dated 26<sup>th</sup> October 2015 (amended from time to time) and consequential compliance obligations of the Point of Sales (POS) Person vis-à-vis-SMC**

This Agreement ("Agreement") dated MM /DD / YYYY , ("Effective date")\* between USER of this portal of Prospect Point of Sales Person ("POS") and SMC Insurance Brokers Pvt Ltd ("Company") (Hereafter referred to as SMC), sets forth the terms and conditions under which POS shall perform certain services for the Company. . POS and Company may also be referred to individually as a "party" and together as the "parties."

WHEREAS, Company is a direct Insurance Broker registered by IRDAI vide registration No:- **DB-272/04/289** valid up to 27/01/2023 and renewable thereafter from time to time.

WHEREAS, Company wishes to appoints the POS to solicit the Insurance products, as may be specified by IRDAI from time to time, on the terms and conditions provided for herein.

WHEREAS, POS desires to undertake the solicitation of such Insurance product/products for and on behalf of the Company.

WHEREAS, The Company appoints the POS hereunder for the purpose of selling and servicing of **Insurance** policies for and on behalf of the Company,

The Company reserves the right to approve or disapprove the contracting of any such POS.

The Company and the POS expressly agree that the POS is not an employee of the Company and shall be considered an Independent contractor for the purposes of this agreement as well as for all practical purposes throughout the term of his engagement. The POS shall not be reimbursed of reasonable expenses incurred in the event the same are incurred in accordance with the terms set out in this agreement and shall supply its own work place, its own supplies and set its own work hours, all at no cost to the Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein stated, and for other good and valuable consideration, the parties hereto agree as follows:

## **1. APPOINTMENT**

- 1.1.** The Company hereby appoints POS to solicit, at its own expense, new and/or renewal applications for insurance contracts ("Policy" or "Policies") as listed in **Schedule A**, as amended from time to time. No product shall be solicited by the POS other than the list mentioned in Schedule A.

## **2. DUTIES OF POS**

- 2.1.** The POS, in his capacity as POS, shall be responsible for assuring that all of its Producers, as well as the POS itself, comply with the duties set out in this Clause 2.
- 2.2.** POS will comply with all laws and regulations which relate to this Agreement and shall defend, indemnify and hold the Company Harmless for its failure to do so. POS shall maintain in good standing, at its own cost, licenses required by all applicable statutes and regulations for undertaking such activities.
- 2.3.** POS shall not, under any circumstances, solicit any business except mentioned in schedule "A".
- 2.4.** POS will comply with the Company's rules and regulations relating to the Soliciting the insurance business. As a material part of the consideration for the making of this Agreement by the Company, POS agrees that there will be made no representations whatsoever with respect to the nature or scope of the benefits of the Policies sold except through and by means of the written material either prepared and furnished to POS for that purpose by the Company or approved in writing by the Company prior to its use. POS shall have no authority and will not make any oral or written alteration, modification, or waiver of any of the terms or conditions of any Policy whatsoever.
- 2.5.** POS warrants that POS will diligently and to the best of its ability ensure that the facts set forth by any applicant/prospect in any application it solicits are true and correct.
- 2.6.** POS will conduct itself so as not to affect adversely the business, good standing, and reputation of the Company.
- 2.7.** POS agrees not to employ or make use of any advertisement in which the Company's (or its affiliate's) name or its registered trademarks are employed without the prior written approval and consent of the Company. Upon request of POS during the term of this Agreement, the Company shall make available for POS 's use, standard visiting cards and other material . POS may add, at POS 's expense, to the standard advertising only its business name, business

address, POS number and telephone number, as provided for in the advertising. No deletions or changes in the advertising copy are permissible.

POS shall act solely as an independent contractor, of-course subject to the control and guidance of the company, and as such, shall have control on: all matters, its time and effort in the placement of the Policies offered hereunder. Nothing herein contained shall be construed to create the relationship of employer and employee between POS and Company.

- 2.8.** POS shall defend, indemnify and hold the Company and its officers, POSs and their employees harmless from all expenses, costs, causes of action, claims, demands, liabilities and damages, including reasonable attorney's fees, resulting from or growing out of any violation of the terms of this Agreement or an unauthorized act or transaction or any negligent act, omission or transaction by POS or employees of POS.
- 2.9.** Solicitation of Applications. POS is authorized to solicit the Insurance Business only to the extent as mentioned in annexure A and strictly as per additional description and narration as may be advised by the Company from time to time.
- 2.10.** No Prior Disciplinary or Criminal Proceedings. POS represents and warrants that he/she has never been convicted of any crime involving moral turpitude and is not disqualified as per section 42D(5) of the Insurance Act and remains Fit and Proper.
- 2.11.** Change of Address. POS shall notify Company in writing of any change of address and/or communication at least thirty (30) days prior to the effective date of such change.
- 2.12.** POS shall undertake all activities in its personal capacity and not engage or employ anyone as canvassers or agents for soliciting the insurance business.
- 2.13.** Collection of Premiums. POS shall have no authority, without written permission of Company, to collect or provide receipt for premium to customers and shall assist the client for compliance of section 64VB of the Insurance Act 1938.
- 2.14.** Other Expenses. POS shall have no claim or shall not be entitled to reimbursement for any expenses incurred as a part of undertaking activities as set out herein, such as, cost of travel, stationery, etc.
- 2.15.** POS shall, on behalf of the Company, collect premiums as per IRDAI norms. All premiums collected on business produced by the POS hereunder shall be submitted to the Company within same day of receipt by POS. POS shall ensure issuance of receipt of the insurer for premiums to customers and shall assist the client for compliance of section 64VB of the Insurance Act 1938. .
- 2.16.** To faithfully perform all duties required hereunder, to cooperate with the Company in all matters pertaining to the issuance of policies, cancellations, claims and to promote the best interest of the Company and customer.
- 2.17.** POS will be bound not to work for any other intermediaries or the Insurance companies. Whatever work POS does in the insurance space, POS is bound to do through Company only.
- 2.18.** POS will ensure the compliance of FIU and obtains KYC
- 2.19.** POS shall not do any claim consultancy and any such opportunity that comes in this area. He shall be further obliged to bring to the notice of the company for its further doing the needful in a professional manner.
- 2.20.** Any financial penalty levied by the IRDAI, if it is based on the violations and non compliance by the POS shall be borne by them. Similarly if suspension, cancellation or withdrawal of license of the company is based on breaches/non compliance on the account of POS, the POS shall compensate the Company for additional costs that the Company has to bear in order to procure another POS as well as indemnify the consequential losses to the Company.
- 2.21.** Any financial loss to the company and to the customer due to negligence on part of POS shall be borne by them.
- 2.22.** The POS shall be duty bound to cooperate with the officers of IRDAI for the purpose of inspection as may be required by IRDAI inspectors or investigating authority from time to time.
- 2.23.** The POS shall maintain records for a period of at least 7 years from the date of issuance of insurance policy or from date of termination of appointment of POS whichever is later.

### 3. DUTIES OF THE COMPANY

- 3.1. The duties of the Company shall vary depending upon the specific product being sold by POS. For all products, the Company will provide all necessary information and knowledge required to solicit the business. The Company will deliver to the customer all insurance policies and related correspondence or similar documents, in accordance with Company procedures. The Company shall respond in a reasonable and timely manner to inquiries and questions about the product. The Company shall maintain reasonable accounting, administrative, and statistical records in accordance with prudent standards of insurance record keeping, including premium, sale or effective date, and any other records needed to verify coverage, pay claims, or underwrite the company insurance products, of any insured participant covered under the policies.
- 3.2. The Company shall provide administrative support including Software Platform to the POS to enable him to perform his obligation on the interest of Broking Company and the customer whose business has been solicited.

### 4. RESERVATION OF RIGHTS

The Company reserves the right to reject any and all applications for its Policies submitted by POS if they are not found to be of the order of merit required by the customer or the company or the Insurance Company.

### 5. MAINTENANCE OF RECORDS

- 5.1. Company and POS each shall maintain records of transactions with individual insured persons.
- 5.2. The Company, its employees, or authorized representatives may have unrestricted access to records and may audit, inspect and examine at reasonable times, upon reasonable notice and during regular business hours at POS 's place of business, all books and records,
- 5.3. During the term of the Agreement, any extensions of it and for five (5) years thereafter, the Company shall keep strictly secret and confidential any Confidential Information about POS, and POS shall keep strictly secret and confidential any Confidential Information about the Company. "Confidential Information" shall, amongst other necessary matter/s, include: information, written or unwritten, which pertains in any way to financial or accounting matters, business production, methods of business operations, marketing, strategic planning or proprietary information of any kind or nature whatsoever, including trade secrets or know-how. Confidential Information does not include information that: (i) is already known to the recipient at the time of disclosure to it; (ii) is in the public domain or subsequently becomes publicly available; (iii) is provided to the recipient by a third party who is under no such obligation of confidentiality; or (iv) is independently developed by the recipient. Each party shall take necessary and reasonable precautions to prevent unauthorized disclosure of Confidential Information and shall require all of its officers, employees, and other personnel to whom it is necessary to disclose the same, or to whom the same has been disclosed, to keep this Confidential Information secret and confidential. It is understood, however, that certain "Confidential Information" may be required to be filed with State and Central regulatory agencies in accordance with their reporting requirements. Neither party shall make use of the name or service mark(s) of the other, including use of the name or service mark(s) of any marketing, enrolment, or other public relations material without prior written approval of the other party.
- 5.4. There shall be restriction on use of SMC logo and letterhead by **POS** unless approved by SMC in writing.

### 6. COMPENSATION

- 6.1. Compensation for each policy written hereunder shall be made by the Company to POS in accordance with **Schedule B**, attached hereto and incorporated herein by reference.
- 6.2. Compensation due under this Agreement shall be paid to POS within 30 days from the end of each calendar quarter in which the Company receives premium with respect to its Policies or as may otherwise be agreed upon in writing.
- 6.3. Under all circumstances, the Company shall have the right to offset overpayments to POS against amounts due to POS.

- 6.4. Company has the right to recover/offset payment made with respect to its policies on which the parent insurance company recovers any amount from company by any reason whatsoever.
- 6.5. Company has the right to forfeit/recover all the past and future payment done from POS on account of any fraud/misappropriation of funds by POS and on occurrence of any event as mentioned in Clause 7 of the agreement.

## **7. EFFECTIVE DATE, TERM AND TERMINATION**

- 7.1. This Agreement shall commence on the effective date first stated above and shall continue in force until terminated pursuant to this Article. Upon termination, all business produced by the POS shall remain in full force and effect until the natural expiration or prior cancellation of such business, and shall be subject to all terms and conditions of this Agreement. Upon termination, the all data related to policy holder will be handed over to company by POS.
- 7.2. This Agreement will terminate automatically upon the occurrence of any of the following events by POS, and upon such occurrence the parties shall be obligated to make only those payments the right to which accrued until the date of termination:
- 7.2.1. Conviction of a felony by POS;
  - 7.2.2. Misappropriation (or failure to remit) any funds or property due the Company from POS;
  - 7.2.3. Determination that POS is not in compliance with Company underwriting guidelines or the terms of this Agreement and POS has failed to correct the problem within 10 days of the Company providing written notice of same;
  - 7.2.4. In the event of fraud or material breach of any of the conditions or provisions of this Agreement on the part of either party, the other party may terminate the Agreement immediately upon written notice.
  - 7.2.5. Fails to comply with directions of SMC.
  - 7.2.6. Furnish wrong information or conceals the information or fails to disclose the material facts of the policy to the policy holder.
  - 7.2.7. Fails to resolve complaints, unless the circumstances are beyond his control, emanating from the business procured by him and persons he deals with
  - 7.2.8. Indulges in inducement in cash or kind with client or any other insurance intermediary/agent/insurer.
  - 7.2.9. Fails to pay any penalty levied on his account.
  - 7.2.10. Fails to carry out his obligations as prescribed in the agreement and in the provisions of: Act/regulations/circulars or guidelines by IRDAI from time to time.
  - 7.2.11. Acts in a manner prejudice to the interest of the company or the client
  - 7.2.12. Acts in a manner that amounts to diverting funds of his Group/Affiliates or associates rather than engaging in the activity of soliciting and servicing insurance business
  - 7.2.13. Is found guilty of fraud or is charged or convicted in any criminal act.
  - 7.2.14. In the event of a material breach by a party to this Agreement, the non-breaching party may terminate this Agreement after providing thirty (30) days written notice to the breaching party to cure such breach. Upon such occurrence, a party shall be obligated to make only those payments the right which accrued until the date of termination.

## **8. GENERAL PROVISIONS**

- 8.1. Failure of either party to insist upon the performance of any of the terms of this Agreement or to declare forfeiture or termination in the event of non-performance by the other party shall not constitute a waiver of performance required hereunder.
- 8.2. No assignment, transfer or disposal of any interest that a party may have pursuant to this Agreement shall be made at any time without prior written approval of the other party. Notwithstanding the foregoing, Company may assign any and all interests under this Agreement to a parent or affiliate, or due to merger or acquisition without the consent of POS.
- 8.3. This Agreement shall be binding upon the administrators and executors, successors and permitted assignees of the parties hereto.
- 8.4. No Amendment or modification of this Agreement shall be valid, or of any force or effect, unless the same be in writing and acknowledged and signed by the Company and POS.

## **9. INTELLECTUAL PROPERTY**

- 9.1.** The POS agrees, warrants and undertakes that it shall take steps to safeguard SMC's intellectual property rights, if in its POS session or SMC's Products, Services and software are not infringed, passed off, diluted, reverse-engineered, hacked into, misappropriated, tampered with and/or copied by the POS , and/or its directors, officers, employees, agents, representatives, subsidiaries, associates, etc.
- 9.2.** The POS acknowledges Company's exclusive ownership over the intellectual property rights contained in the Products and related material supplied to POS . Any and all goodwill associated with the intellectual property rights will inure exclusively to the benefit of Company. During the Term, the POS shall not attempt to register any of the trademarks, service marks, logos, brand names, trade names, domain names and/or slogans confusingly similar to the intellectual property rights of the Company. POS shall execute such documents and do all such acts and things as may be necessary in Company's reasonable opinion to establish Company's ownership of any such rights at Company's expense.

## **10. INDEMNITY**

The POS , shall at its own expense, indemnify, defend and hold harmless SMC and its officers, directors, employees, representatives and agents, against any third party claim, demand, suit, action, or other proceeding brought against SMC or its officers, directors, employees, representatives or agents and against all damages, awards, settlements, liabilities, losses, costs and expenses related thereto (including without limitation attorneys' fees) to the extent that such claim suit, action or other proceedings is based on or arises from any deficiency in service, by the POS , as per the scope of work as detailed in Schedule A hereto or any other breach of terms of this Agreement.

## **11. COMPLIANCE WITH THE LAWS**

Each party represents that it shall abide by and observe all applicable laws, rules, regulations of the Republic of India.

## **12. GOVERNING LAW AND DISPUTE RESOLUTION**

Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall compose of a sole arbitrator to be appointed by both the Parties in mutual consent. The place of arbitration shall be Delhi and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made, in Delhi. The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The provisions of this Agreement shall be governed by and construed in accordance with Indian law. Only the courts at Delhi shall have exclusive jurisdiction in all matters arising under this Agreement

## **13. SEVERABILITY**

If any provision of this Agreement is held illegal or unenforceable by any court or other authority of competent jurisdiction, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect or impair the validity or enforceability of the remaining provision of this Agreement.

## **14. FORCE MAJEURE**

Neither Party shall be under any liability for any failure to perform any of its obligations under this Agreement due to Force Majeure. For the purpose of this clause, "Force Majeure" means fire, explosion, flood, Act of God, act of terrorism, war, rebellion, riots, or sabotage or events or circumstances which are wholly outside the control of the party affected thereby. Where, such event continues to exist for a continuous period of 3 months or more, the Parties hereby agrees that the Agreement shall stand terminated.

## **15. Training and qualification requirement for POS**

**15.1** The POS person shall be atleast 10<sup>th</sup> pass or attain any other qualification IRDAI may prescribe from time to time.

**15.2** The POS shall appear in the online examination conducted by SMC after 15 hours training

## **16. Code of Conduct & POS**

**16.1.** Every POS , shall adhere to the code of conduct specified below. Every insurance POS shall

**16.1.1.** Identify himself and the Company of whom he is an insurance POS.

**16.1.2.** show and disclose the POS appointment letter to the prospect on demand;

**16.1.3.** Disseminate the requisite information in respect of insurance products offered for sale and take into account the needs of the prospect while recommending a specific insurance plan;

**16.1.4.** Where the Insurance POS should dispassionately advise the policyholder on the products of all Companies and the product best suited to the specific needs of the prospect.

**16.1.5.** indicate the premium to be charged by the Company for the insurance product offered for sale;

**16.1.6.** explain to the prospect the nature of information required in the proposal form by the Company, and also the importance of disclosure of material information in the purchase of an insurance contract;

**16.1.7.** bring to the notice of the Company every fact about the prospect relevant to insurance underwriting, including any adverse habits or income inconsistency of the prospect, within the knowledge of the POS , along with every proposal submitted to the Company wherever applicable, and any material fact that may adversely affect the underwriting decision of the Insurance Company as regards acceptance of the proposal, by making all reasonable enquiries about the prospect;

**16.1.8.** obtain the requisite documents at the time of filing the proposal form with the Insurance Company; and other documents subsequently asked for by the Company for completion of the proposal;

**16.1.9.** advise every prospect to effect nomination under the policy

**16.1.10.** inform promptly the prospect about the acceptance or rejection of the proposal by the Company;

**16.1.11.** render necessary assistance and advice to every policyholder on all policy servicing matters including assignment of policy, change of address or exercise of options under the policy or any other policy service, wherever necessary;

**16.1.12.** render necessary assistance to the policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims by the Company;

**16.1.13.** offer a choice of insurance policies of different insurers to the prospect.

**16.1.14.** make available to the policy holder a copy of the insurance policy in electronic form.

**16.1.15.** transfer all data of the policyholders to the insurers at the end of the day.

**16.1.16.** submit periodical returns as required by IRDAI.

**16.1.17.** prominently display copy of the code of conduct on its premises.

**16.1.18.** check compliances to the Act , Rules, Regulations, Circulars, Guidelines, etc issued by the IRDAI time to time in addition of POS guidelines.

**16.1.19.** undertake reconciliation on a weekly basis on the insurance policies distribution & premium collected between the POS and company.

**16.1.20.** furnish any information as required by the IRDAI and cooperate in any inquiry conducted by the Authority.

**16.1.21.** be responsible for compliance of the directions issued by the IRDAI or any statutory authority for compliance

**16.1.22.** have in place a mechanism to address policy holder's grievances.

**16.1.23.** also be responsible for its acts of omission and commission as well as of its employees.

**16.1.24.** also comply with the provisions of the Insurance Act 1938, The IRDAI Act, 1999 , the regulations made there under, guidelines and circulars issued by the Authority from time to time .

**16.1.25.** Intimate the renewal of the policy to customer and shall make best possible efforts to communicate to customer about the renewal of the policy.

**16.2. No insurance POS shall,**

**16.2.1.** solicit or procure insurance business without being appointed to act as such by the Company.

**16.2.2.** induce the prospect to omit any material information in the proposal form;

**16.2.3.** induce the prospect to submit wrong information in the proposal form or documents submitted to the Company for acceptance of the proposal;

**16.2.4.** resort to multilevel marketing for soliciting and procuring insurance policies and/or induct any prospect/policyholder to join a multilevel level marketing scheme.

**16.2.5.** behave in a discourteous manner with the prospect;

- 16.2.6. interfere with any proposal introduced by any other insurance POS ;
- 16.2.7. offer different rates, advantages, terms and conditions other than those offered by his Company;
- 16.2.8. demand or receive a share of proceeds from the beneficiary under an insurance contract;
- 16.2.9. force a policyholder to terminate the existing policy and to effect a new policy from him within three years from the date of such termination of the earlier policy;
- 16.2.10. sale through tele marketing and soliciting and procuring insurance policies under distance marketing guidelines ;
- 16.2.11. receive any payment directly or indirectly for outsourcing activity behalf of either the insurer or the insurance intermediary;
- 16.2.12. force the prospect/ policyholder to necessarily buy insurance policy through a particular insurer;
- 16.2.13. deny the prospect his rights and options to seek insurance policy or renewal of motor insurance policy from any insurer;
- 16.2.14. directly or indirectly control or interfere in determination of premium of policies;
- 16.2.15. direct or indirect imposition of risk selection by insurers or curtailment of choice of the prospect/ policyholder;
- 16.2.16. interfere in product design;
- 16.2.17. interfere in the appointment of surveyors and loss assessors assessment activities;
- 16.2.18. directly or indirectly influence the claims for inflating its revenue;
- 16.2.19. issue a insurance policy or insurance cover note that carries name or logo or any other symbol, except that of the insurer;
- 16.2.20. conduct its business in a manner prejudicial to the interests of the policyholders;
- 16.2.21. indulge in manipulating the insurance business;
- 16.2.22. indulge in unfair trade practices;
- 16.2.23. default in complying with, or acts in contravention of, any requirement of the Act, IRDA Act, 1999 or of any rule or any regulation or order made or any direction issued there under;
- 16.2.24. default in complying with any direction issued or order made, by the Authority;

16.3. Every insurance POS shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing;

**17. POS has read, agreed and accepted all the terms and conditions, regulations and code of conducts in and linked to POS guidelines vide ref:IRDA/INT/GDL/ORD/183/10/2015 dated 26<sup>th</sup> October 2015 and hereby confirms that all the information provided at the time of filling the application form is true and correct.**

\*Effective Date will be registration date of POS

This Agreement constitutes the entire Agreement between the parties with respect its matter.

IN WITNESS WHERE OF, intending to be legally bound hereby, the parties hereto have executed this Agreement.

**SMC INSURANCE BROKERS PVT LTD**

**POS**

Name: - Sakshi Mehta (Principal Officer)

SMC INSURANCE BROKERS PVT LTD  
Parsvnath Metro Mall, Pratap Nagar Metro  
Pratap Nagar ,New Delhi-110007  
Tele:-011-66222266

**SCHEDULE A**

The POS can only sell the following pre underwritten products

- Motor Comprehensive Insurance Policy
- Two Wheeler Policy
- Motor and two wheeler add-ons
- Home Insurance policy
- Personal Accident policy
- Travel Insurance Policy
- Hospital Cash Policy
- Critical Illness policy
- Crop Insurance
- Term Life Policy
- Non Linked (Non Participating) Endowment Product
- Immediate Annuity Product

### SCHEDULE B

Products	Payout %
Motor Comprehensive Insurance Policy	
Two Wheeler Policy	
Home Insurance Policy	
Personal Accident Policy	
Travel Insurance Policy	
Hospital Cash Policy	
Critical Illness Policy	
Crop Insurance	
Term Life Policy	
Non Linked (Non-Participating) Endowment Product	
Immediate Annuity Product	