

# Service Agreement with POSP

This *Service Agreement with POSP* (hereinafter referred to as the '*Agreement*', which term shall include the annexures, attachments, addendums and schedules described therein/ appended / attached thereto) is made dated \_\_\_\_\_ by and between

## Between:

*Ginteja Insurance Brokers Private Limited* a company incorporated under the provisions of Companies Act, 2013 and having its Registered office at 25D, Harish Mukherjee Road.,1E, 1<sup>st</sup> Floor, Kolkata – 700 025 (hereinafter referred to as "*the Company*", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its legal representatives, assigns, administrators, representative-in-interest and executors) of the *First Part*;

And

Mr./Ms./Mrs. \_\_\_\_\_ PAN No. \_\_\_\_\_

AADHAR No. \_\_\_\_\_, POS \_\_\_\_\_

Regn. No. \_\_\_\_\_ (hereinafter referred to as the "*POSP*")  
having its place of residence and/or work at \_\_\_\_\_  
which expression shall, unless repugnant or contrary to the context, include its representatives in interest and permitted assigns) of the Other Part.

The Company and the POSP shall hereinafter be individually referred to as the "*Party*" and collectively as the "*Parties*".

## RECITALS

Whereas, Company is a Direct Broker (Life, Non-Life & Health) registered by IRDAI vide registration and renewable thereafter from time to time.

Whereas, Company wishes to contract with POSP to solicit the Insurance products, as may be specified by IRDAI from time to time, on the terms and conditions provided for herein.

Whereas, POSP desires to enter into an Agreement with Company for the solicitation of such Insurance product/products.

Whereas, The Company appoints the POSP for the purpose of selling and servicing of Insurance policies on behalf of the Company. The Company reserves the right to terminate the contract of any such POSP. The Company and the POSP expressly agree that the POSP is not an employee of the Company and shall be considered an independent contractor for the purposes of this agreement. The POSP shall not be reimbursed of any expenses incurred under

this agreement and shall supply his or her own work place, use his or her own supplies and set his or her own work hours, all at no cost to the Company.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

## **1. DEFINITIONS**

*It is expressly understood by and between the parties hereto that the terms mentioned in this Agreement shall have the same meaning as ascribed to it under the Regulations.*

- a) **"Act"** means the Insurance Act, 1938 (4 of 1938).
- b) **"Authority"** or **"IRDAI"** means the Insurance Regulatory and Development Authority established under the provisions of Section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).
- c) **"Effective Date"** shall mean the date of issuance of completion certificate by the Company
- d) **"Insurance Broker"** – as defined in Regulation 2(1)(k) of Insurance Regulatory and Development Authority (Insurance Company) Regulations, 2013.
- e) **"Insurer"** – as defined under Section 2 (9) of Insurance Act, 1938.
- f) **"POSP"** – means Point of Sale Person as defined in guidelines issued by IRDAI relating to POSP's for Insurers (Life, Non-Life & Health).
- g) **"Website"** – shall mean '[www.gintejainsurance.com](http://www.gintejainsurance.com) , which is owned and maintained by the Insurance Broker.

### ***Interpretation:***

All definitions mentioned in the IRDAI Guidelines, IRDAI Insurance (Broker) Regulations, 2018 and guidelines related to POSPs for Insurers (Life, Non-Life & Health) updated from time to time

and regulations for Insurance Brokers and POSP shall apply *mutatis mutandis* to the terms of this Agreement.

In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement, and, unless the context otherwise requires:

- a) Words in the singular include the plural and vice versa;
- b) Words importing a gender include any gender;
- c) a reference to a Clause is to a clause of this Agreement;
- d) All words and expressions used and not defined in this Agreement but defined in the Insurance Act 1938, the Insurance Regulatory and Development Authority Act, 1999 or any of the Regulations made thereunder shall have the meanings respectively assigned to them in those Acts or Regulations.

## **2. QUALIFICATIONS**

The POSP shall be at least 10<sup>th</sup> pass or have any other qualification IRDAI may prescribe from time to time.

## **3. TRAINING AND EXAMINATION**

- a) The POSP person shall attend an in-house training session for a minimum of 15 (fifteen) hours as may be conducted by the Company in accordance with the specifications laid down under the IRDAI Guidelines on Point of Sales Person – Life, Non-Life & Health.
- b) Post completion of the in-house training session, the POSP person shall be required to undertake the exam conducted by the Company and thereafter score the minimum grades in order to pass the exam.
- c) Upon successful completion and passing of the exam, the POSP person shall receive a certificate from the Company in the format as prescribed under the IRDAI Guidelines on Point of Sales Person – Life, Non-Life & Health Insurers.

## **4. SCOPE OF SERVICES AND COMPENSATION:**

The Parties agree that POSP shall perform the activities as allowed and envisaged under the IRDAI prescribed guidelines from time to time.

The Company agrees to make payment and/or remuneration to the POSP fees for the services and discharge of his functions obligations to be rendered by the POSP as specified in Annexure II attached hereto. The remuneration is subject to deduction of all applicable taxes.

POSP confirms that the first/incepting policy sale done by him/her, if solicited for himself/herself, the commission for the same policy will not be payable by the Company to him/her until further sales are effected.

#### **5. TERM AND TERMINATION:**

a) This Agreement shall become effective from the Effective Date as defined in Clause 1(c) of this Agreement and shall remain in force till expiry or cancellation of the License for any reason whatsoever.

b) The Parties can renew or enter into another agreement or may on or prior to the expiry of the term aforementioned, mutually agree in writing to extend this Agreement for a further period/s of such duration as agreed by the Parties subject to renewal of registration.

c) Notwithstanding anything contained in this Agreement to the contrary or notwithstanding any separate written communication, either Party may terminate this Agreement at any time by providing one (1) month's prior notice in writing to the other Party during the validity of the Agreement.

d) This Agreement will terminate automatically upon the occurrence of any of the following events by POSP, and upon such occurrence the parties shall be obligated to make only those payments the right to which accrued to the date of termination :

- Failure of the POSP to attend the in-house training session as conducted by the Company;
- Failure of the POSP to clear the examination as conducted by Company;
- Conviction of a felony by POSP;
- Misappropriation (or failure to remit) any funds or property due the Company from POSP;
- Determination that POSP is not in compliance with Company underwriting guidelines or the terms of this Agreement and POSP has failed to correct the problem within 10 days of the Company providing written notice of same;
- 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.
- Fails to comply with directions of the Company.
- Furnish wrong information or conceals the information or fails to disclose the material facts of the policy to the policy holder.

- Fails to resolve complaints, unless the circumstances are beyond his control, emanating from the business procured by him and persons he deals with
- Indulges in inducement in cash or kind with client or any other insurance intermediary/agent/insurer.
- Fails to pay any penalty levied on his account.
- 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.
- Acts in a manner prejudicial to the interest of the company or the client
- 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
- Is found guilty of fraud or is charged or convicted in any criminal act.
- Indulges in any other misconduct.

e) Agreement shall automatically terminate if the POSP acquires a license as or becomes related to, an insurance company, insurance agent, corporate agent, a micro-insurance agent, TPA, Surveyor, Referral partner or loss assessor. Upon contravention of this Clause 5(e) by the POSP, the POSP shall be liable to indemnify the Company to the extent of such losses as may be incurred by the Company.

## **6. REPRESENTATIONS AND WARRANTIES:**

a) POSP represents and warrants to the Company that:

(i) He has the necessary qualification power or authority and the legal right to conduct the business/provide unprejudiced services to the company in respect of all or any of the functions.

(ii) POSP 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 as per the format enclosed herewith as Annexure -2;

(iii) He is not associated with or has been simultaneously engaged by any other insurance intermediary (Life, Non-Life & Health) for providing similar obligations as more specifically provided under Clause 7 of this Agreement;

(iv) He shall not during the term of this Agreement engage himself/herself with any other insurance intermediary (Life, Non-Life & Health).

(v) He has the necessary power or authority and the legal right to execute, deliver and perform this Agreement;

(vi) He shall comply with all applicable regulatory and other legal requirements to this Agreement.

(vii) POSP 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.

b) The Company hereby represents and warrants to - that:

(i) It has obtained all the necessary approvals, permits and authorisations internally or otherwise, as may be required to engage in the business as envisaged under and to enter into this Agreement;

(ii) It has fulfilled all the criteria provided under the applicable Regulations but not limited to the IRDAI Guidelines on Point of Sales Person for: Life Insurers, Non- Life & Health Insurers, Guidelines on Point of Sales Person – Life Insurers, Insurance Regulatory and Development Authority (Insurance Broker) Regulations, 2013 and amendments thereof to act as POSP

(iii) It shall comply with all applicable regulatory and other legal requirements to this Agreement.

## **7. OBLIGATIONS OF POSP:**

The POSP hereby agrees, covenants and undertakes with - as follows:

a) POSP will comply with all laws and regulations which relate to this Agreement and shall 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.

b) POSP shall not solicit any business except: mentioned in Schedule "A" i.e., the policies/products Authorised by IRDAI from time to time.

c) POSP 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, POSP 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.

d) POSP will conduct itself so as not to affect adversely the business, good standing, and reputation of the Company.

e) POSP 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 POSP during the term of this Agreement, the Company shall make available for POSP's use, standard visiting cards, and other material. POSP may add, at POSP's expense, to the standard advertising only its business name, business address, POSP number and telephone number, as provided for in the advertising. No deletions or changes in the advertising copy are permissible.

f) POSP shall act solely as an independent contractor, 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 POSP and Company.

g) POSP shall indemnify and hold the Company and its officers, 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 unauthorized act or transaction or any negligent act, omission or transaction by POSP or employees of POSP.

h) Change of Address. POSP 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.

i) POSP shall not engage or employ anyone as canvassers or agents for soliciting the insurance business.

j) Collection of Premiums. POSP shall have no authority, without written permission of Company, to collect or provide receipt for premiums to customer and shall assist the client for compliance of section 64VB of the Insurance Act 1938.

k) Other Expenses. POSP shall have no claim or shall not be entitled to reimbursement for any expenses.

l) POSP shall, on behalf of the Company, collect premiums as per IRDAI norms. All premiums collected on business produced by the POSP hereunder shall be submitted to the Company within same day of receipt by POSP.

m) 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.

n) POSP will be bound not to work for any other intermediaries or the Insurance companies. Whatever work he does in the insurance space, POSP is bound to do through Company only.

o) POSP will ensure the compliance of KYC/AML guidelines issued from time to time and obtain the necessary documents in this regard.

p) POSP shall not do any claim consultancy and any if such opportunity that comes in this area, he shall be further obliged to bring the same to the notice of the company for its further action.

q) Any financial penalty levied by the IRDAI based on the violations and non-compliance by the

POSP of the applicable laws and regulations shall be borne by the POSP and not the Company. Similarly, in case of any suspension, cancellation or withdrawal of license of the Company because of any breaches/non-compliance on account of POSP, the POSP shall indemnify the Company for consequential losses specifically arising from violation of IRDAI Guidelines, IRDAI Insurance (Broker) Regulations, 2018 and guidelines related to POSP's for Insurers (Life, Non-Life & Health) as updated from time to time.

r) The POSP 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.

s) The POSP shall inform the Company in advance by way of a written declaration as acceptable to the Company in case the POSP is associated with or has been simultaneously engaged by any other insurance intermediary (Life, Non-Life & Health).

t) The POSP shall carry on its business pertaining to POSP products lawfully and diligently, and in compliance with all applicable laws, rules and regulations including but not limited to the IRDAI Guidelines on Point of Sales Person – Non-Life & Health Insurers, Guidelines on Point of Sales Person –Life Insurers,

u) The POSP shall maintain proper records and reports of its activities under in a manner as mutually agreed upon by the parties and in a manner prescribed by IRDAI.

v) The POSP shall comply with all the provisions of the Insurance Act 1938, IRDA Act, 1999 and rules and regulations framed thereunder and such other directions issued and/or amended by the Authority from time to time.

w) The Company shall have the right to inspect the POSP including books and records of the POSP applicable and under this agreement. Further the Company shall have the right to review of the performance of the POSP.

## ***8. OBLIGATIONS OF COMPANY***

a) The Company shall be responsible for conducting an in-house training session of the POS person for a minimum of 15 (fifteen) hours as per the model syllabus specifically provided under the IRDAI Guidelines on Point of Sales Person – Life, Non-Life & Health which may include features of various POS products designed by the Company from time to time and may be modified and developed according to the business needs of the Company.

b) The Company shall issue a certificate to the POS person in the format as specified under the IRDAI Guidelines on Point of Sales Person – Life, Non-Life & Health only upon successfully clearing the exam it conducts.

c) The Company shall maintain records of all information obtained through the POSP, the details of the policies sold out of such information thus obtained and other functions/activities performed by POSP as a part of his engagement/appointment with the company. The Company shall furnish such records or information in relation to this agreement as and when required by the Authority.



d) The Company shall upload the details of the POS person with the Insurance Information Bureau (IIB), Hyderabad and thereafter shall maintain proper record of training and examination for a minimum of 5 (five) years from the end of financial year in which these examinations are conducted and shall make available such records for the purpose of inspection by the respective government authority.

e) The Company shall verify depending upon the specific product being sold by POS. For all products, the Company will provide brochures and proposal forms. The Company will deliver to the customer all insurance policies and related correspondence or similar documents, in accordance with Company procedures.

f) The Company shall respond in a reasonable and timely manner to inquiries and questions about the product.

g) 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.

#### ***9. RESERVATION OF RIGHTS***

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

b) The Company reserves the right to discontinue writing or offering any of the Policies which become subject to this Agreement upon giving a thirty (30) days written notice to POSP (or any other number of days as prescribed under law in the POSP's state of domicile).

c) The Company shall share with the POSP, information relating to its products from time to time.

#### ***10. PRIVACY POLICY***

a) POSP confirms and undertakes that he will not violate privacy covenants and in case of any breach of privacy the POSP shall be solely responsible for losses arising out of the same.

b) POSP shall ensure that there are proper encryption and security measures to prevent any hacking into the information/data pertaining to transactions contemplated under this Agreement. POSP shall adhere to the appropriate security norms including but not limited to the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 as amended from time to time.

c) POSP shall not share any information of the clients and the Company with others without permission of the client and the company

#### ***11. INTELLECTUAL PROPERTY RIGHTS AND BRANDING:***

All intellectual property rights (in the nature of trademark or copyright or any other right) in the brand name, product names, logos, designs, colour schemes, names, marks, designs, drawings, colour, artistic work / manner etc. (hereafter collectively referred as "**Marks**") shall vest exclusively and at all times with the Company and the POSP agrees and undertakes not to set up an adverse claim at any time either during the currency of this Agreement or at any time thereafter. The POSP also agrees and undertakes that it shall not allow the usage of Marks by any other third party.

## **12. CONFIDENTIALITY:**

Both parties recognize, accept and agree that all tangible and intangible information obtained or disclosed to each other and/or its personnel/representatives, including all details, documents, data, records, reports, systems, papers, notices, statements, business information and practices and trade secrets (all of which are collectively referred to as "**Confidential Information**") shall be treated as confidential and both Parties agree and undertake that the same will be kept secret and will not be disclosed, save as provided below, in whole or in part to any person/s and/or used and/or be allowed to be used for any purpose other than as may be necessary for the due performance of obligations hereunder, except with written authorization from other party.

a) POSP agrees and undertakes that he shall hold all Confidential Information in confidence and in particular shall:

i. not use or permit or enable any person to use any of the Confidential Information in any manner.

ii. not disclose or divulge any Confidential Information to any person return all and any Confidential Information which may be in his possession/custody within three years of termination/ expiry of this Agreement.

b) The obligation of confidentiality as above shall not apply to any information which is:

(i) in the public domain through no fault of the receiving party,

(ii) rightfully received from a third party without any obligation of confidentiality,

(iii) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party,

(iv) independently developed by the receiving party,

(v) generally made available to third parties without any restriction on disclosure,

(vi) communicated in response to a valid order by a court or other governmental body, as otherwise required by law, or as necessary to establish the rights of either party under this Agreement, or.

c) Obligations under this clause to the extent provided shall continue to apply even after the

termination or expiry of this Agreement. In case of any breach of this provision by either party, POSP undertakes to indemnify for losses caused due to such breach.

### **13. INDEMNITY:**

POSP agrees to indemnify and keep indemnified and hold harmless at all times its directors and officers from and against any and all losses, claims, actions, proceedings, damages (including reasonable legal and lawyer's fees) which may be incurred by the Company on account of (a) negligence or misconduct on the part of the POSP (b) due to breach any terms and conditions of this Agreement (c) for breach of any intellectual property rights of the Company, or of any third party which commences an action or makes a claim against the Company and such breach is attributable to the acts of omission / commission by Insurance Company (d) any loss caused to the Company due to breach of Confidentiality by the POSP.

### **14. LAW AND ARBITRATION:**

a) The provisions of this Agreement shall be governed by, and construed in accordance with Indian law.

b) 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. Following provisions shall be adhered to for any such arbitral proceedings:

(i) The arbitral tribunal shall be composed of a sole arbitrator mutually appointed by the Parties. In the event of non-agreement each of the parties shall individually appoint an arbitrator and there two arbitrators shall thereafter jointly appoint a third arbitrator which three arbitrators shall jointly conduct arbitration proceedings.

(ii) The place of arbitration shall be Kolkata and any award whether interim or final, shall be made, and shall be deemed for all purposes between the Parties to be made, in Kolkata.

(iii) The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian law.

(iv) The rights and obligations of the Parties under, or pursuant to, this Clause, including the arbitration Agreement in this Clause, shall be governed by and be subject to Indian law.

### **15. MISCELLANEOUS**

#### **(A) Amendments; No Waivers**

(i) Any provision of this AGREEMENT may be amended or waived if, and only if such

amendment or waiver is in writing and signed, in the case of an amendment by each Party or in the case of a waiver, by the Party against whom the waiver is to be effective.

(ii) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(C) Entire Agreement; No Third-Party Rights

This AGREEMENT constitutes the entire Agreement between the Parties with respect to the subject matter hereof. No representations, inducements, promises, understandings, conditions, indemnities or warranties not set forth herein have been made or relied upon by any Party hereto.

Neither this AGREEMENT nor any provision hereof is intended to confer upon any Person other than the Parties to this AGREEMENT any rights or remedies hereunder.

(D) Further Assurances

In connection with this AGREEMENT, as well as all transactions contemplated by this

AGREEMENT, POSP agrees to execute and deliver such additional documents and to perform such additional actions as may be necessary, appropriate or reasonably requested to carry out or evidence the transactions contemplated hereby.

(E) Severability

The invalidity or unenforceability of any provisions of this AGREEMENT in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this AGREEMENT in such jurisdiction or the validity, legality or enforceability of this AGREEMENT, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the Parties hereunder shall be enforceable to the fullest extent permitted by law.

(F) Captions

The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

(G) Counterparts

This Agreement may be executed simultaneously in duplicate each of which will be deemed an original, but all of which will constitute one and the same instrument.

(H) COMPLIANCE WITH LAWS

Each Party represents that it shall abide by and observe all applicable laws, rules, regulations.

(I) Communication & Notices

Any notice or other communication given pursuant to this Agreement must be in writing and

(a) delivered personally, (b) sent by facsimile or other similar facsimile transmission, (c) or sent by registered mail, postage prepaid, as follows:

If to the POSP:

If to the Broker (Company):

*Ginteja Insurance Brokers Private Limited,*

25D, Harish Mukherjee Road.,1E, 1<sup>st</sup> Floor, Kolkata – 700 025

**IN WITNESS WHEREOF** the Parties have caused these present to be executed on the day and year first hereinabove written:

Signed and Delivered by within named  
Ginteja Insurance Brokers Private Limited  
by the hands of its Authorised Signatory,

Witness:

Name & Signature

Signed and Delivered by  
by the hands of POSP  
Mr./Ms./Mrs.,

Witness:

Name & Signature