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NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

ASURION INSURANCE SERVICES, INC.  
and ASURION PROTECTION SERVICES, LLC

Respondents.

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CONSENT ORDER

WHEREAS, the New York State Department of Financial Services (the "Department") investigated whether Asurion Insurance Services, Inc. ("AIS") and Asurion Protection Services, LLC ("APS") (collectively "Respondents") were complying with the requirements of the New York Insurance Law and other applicable laws and regulations when selling insurance (the "Investigation");

WHEREAS, Respondents act as insurance producers, assisting wireless communications equipment vendors ("wireless vendors"), who offer wireless communications equipment insurance, including, but not limited to, mobile phone and tablet insurance;

WHEREAS, Respondents assist wireless vendors by packaging programs, placing insurance with underwriters, and designing written consumer materials, such as brochures, which must be made readily available to prospective buyers and contain disclosures required by New York law.

WHEREAS, Respondents impermissibly offered inducements to consumers by discounting other products bundled with wireless communications equipment insurance and failed to comply with mandatory disclosure requirements;

WHEREAS, Respondents' brochures failed to adequately describe policy exclusions, disclose the availability of premium credits for holders of third-party service contracts, and adequately disclose producer compensation;

WHEREAS, Respondents were on notice that these practices violated New York law since at least January 3, 2018, when the Department published Circular Letter No. 1 (the "Guidance") regarding the sale of wireless communications equipment insurance and service contracts and which expressly noted that these practices were impermissible; and

WHEREAS, Respondents failed to comply with laws cited in the Guidance for over a year after its publication;

NOW, THEREFORE, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing;

### **FINDINGS**

The findings of the Department are as follows:

#### **Relevant Entities**

1. AIS is a property/casualty agent and independent adjuster licensed by the Department based in Nashville, Tennessee, and offers wireless communications equipment insurance in New York.
2. APS is a property/casualty agent and independent adjuster licensed by the Department with its principal place of business in Nashville, Tennessee, and provides administrative services to support insurance programs for wireless communication devices,

including insurance programs sold with an extended warranty program for consumer equipment.

### **Insurance Law and Regulations**

3. Wireless vendors may sell, per a limited license under the Insurance Law, insurance to cover consumers' mobile phones. The Governor signed into law amendments to New York Insurance Law § 2131 in 2003 to authorize the Superintendent to issue limited insurance agent licenses to wireless vendors who would otherwise require licensing as insurance agents or insurance brokers. Section 2131 requires wireless vendors to provide certain brochures and other written materials to prospective consumers, and provide training materials to the persons selling the insurance. The brochures and other written materials, training materials, and insurance policy forms are subject to review and approval by the Department, and the rates are filed with and subject to review and approval by the Department in accordance with Insurance Law Article 23.

4. In particular, Insurance Law § 2131(e)(2) requires wireless vendors to make readily available to a prospective consumer at each location where wireless communications equipment agreements are executed, brochures or other written materials that: 1) summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer and the insurance agent through which the limited licensee places business; 2) disclose that these policies may provide a duplication of coverage already provided by a homeowners' or other insurance policy; 3) state that the consumer is not required to purchase the insurance in order to purchase or lease wireless communications equipment; 4) describe the process for filing a claim in the event the consumer elects to purchase coverage; 5) set forth the price, deductible, benefits, exclusions and conditions or other limitations of the policies; 6) disclose

that the employees of the limited licensee are not qualified or authorized to evaluate the adequacy of the consumer's existing coverages, unless otherwise licensed; and 7) state that the consumer may cancel the insurance at any time and any unearned premium will be refunded in accordance with applicable law. Pursuant to Insurance Law § 2131(f), any brochures or other written materials used in connection with the wireless communications equipment insurance must include disclosure of the claims filing process, premium, deductible amounts and limits, which must be prominently displayed in the brochure with at least 12-point type bold headings. The brochures must be written in a clear and coherent manner and, whenever practicable, must use words with common and everyday meaning.

5. The Department promulgated 11 NYCRR 30 ("Regulation 194") on January 25, 2010 and the regulation took effect on January 1, 2011. The regulation addresses the potential conflicts of interest that may arise due to the incentive-based compensation an insurer pays to insurance producers. Regulation 194 requires an insurance producer to make certain disclosures to an insurance customer about the producer's role in the transaction and its compensation arrangement with insurers.

6. Regulation 194 applies to a wireless vendor in its role as limited licensed insurance agent when selling its customers a wireless communications equipment insurance policy. Wireless vendors generally will obtain the insurance through insurance producers. Thus, the producers' involvement typically will also render the wireless vendors subject to Regulation 194.

7. In the years following Regulation 194's promulgation, the Department identified violations of the Insurance Law in the wireless communications equipment insurance industry, and in 2018 issued the Guidance to insurers, registered service contract providers, and

insurance producers. The Guidance specified a number of known improper practices occurring in connection with the sale in New York of wireless communications equipment insurance and service contracts.

8. The Guidance identified the following as improper practices: 1) the tying of wireless communications equipment insurance with the sale of a service contract or other non-insurance benefit; and 2) the failure of limited licensees to give all the notices required by Insurance Law § 2131 and other applicable notices, including the producer compensation disclosure notice under Regulation 194.

#### **Inadequate Disclosures and Related Deficiencies**

9. Respondents assist wireless vendors in selling wireless communication equipment insurance.

10. Specifically, Respondents, among other duties, create the brochures that are available for review in wireless communication equipment retailers and distributed to consumers in New York and the training materials provided to persons selling the wireless communications equipment insurance in New York.

11. Brochures that Respondents prepared for multiple wireless vendors failed to include adequate disclosures under Insurance Law § 2131 of one or more of the following: 1) descriptions of policy exclusions, 2) disclosures of the availability of premium credits for holders of third-party service contracts, and 3) disclosures that fees imposed upon failure to return a device after replacement are based on cost of claim. In addition, all of the brochures contained inadequate producer compensation disclosures under Regulation 194.

12. Respondents are responsible for complying with the Insurance Laws and regulations promulgated thereunder. However, Respondents had failed to fully comply with

disclosure laws under Insurance Law § 2131 or Regulation 194 prior to the Guidance being issued. In fact, Respondents were told on numerous occasions by Department staff beginning in approximately 2011 that Respondents were required to comply with Regulation 194.

13. Even after publication of the Guidance, Respondents continued to offer products and services that failed to fully comply with Regulation 194 and various sections of the Insurance Law that the Department discussed with Respondents. All such activity identified by the Department is included in the practices and conduct referenced in paragraph 43 below.

14. On February 21, 2018, after revised brochures and training materials were filed with the Department for a proposed new program, and less than two months after publication of the Guidance, the Department instructed Respondents that brochures and training materials for such proposed program lacked Regulation 194 disclosures and sufficient Insurance Law § 2131 disclosures. As a result of the discussion with the Department, this program was not launched in New York.

15. The Department ordered Respondents to comply with New York laws and regulations in all of their brochures and training materials, and although Respondents did revise such materials, Respondents did not fully comply until after numerous conversations over a year and a half.

16. While Respondents now provide the disclosures required by Insurance Law § 2131, many copies of brochures previously distributed to consumers and training materials submitted to persons selling the insurance that were filed with the Department did not contain adequate Regulation 194 disclosures.

### Impermissible Tying of Insurance with Non-Insurance Benefits

17. Insurance Law § 2324(a) prohibits any licensed insurance producer from directly or indirectly giving or offering to give any valuable consideration or inducement that exceeds \$25 that is not specified in the policy or contract. Such a producer violates § 2324 if it ties the sale of insurance to non-insurance, such as a service contract. Insurance must always be offered on a stand-alone basis and there cannot be a difference in insurance benefits or costs when insurance is sold on a stand-alone basis or together with a service contract or other non-insurance benefit.

18. The Department may approve a discount on an insurance premium when a consumer has purchased an extended warranty or service contract and the insurance policy does not itself provide coverage for mechanical failure because an extended warranty or service contract may result in fewer claims. However, the insurer must provide sufficient actuarial support for the discount to the satisfaction of the Department. If a discount is approved, it must apply to any extended warranty or service contract that provides coverage. The discount may not be limited to when the insured has a specific extended warranty or service contract.

19. Respondents offer insurance and non-insurance products for sale to consumers on a stand-alone or bundled basis. When offered in a bundle, the bundle is sold at a significant discount as compared to purchasing each of the products individually.

20. Respondents offered this unapproved discount only for the non-insurance products bundled with the insurance, instead of applying it to any such product that provides coverage.

21. On November 19, 2018, and several other occasions, the Department informed Respondents that offering a discount on an insurance and non-insurance bundle violates the law. Respondents amended their programs to reflect the guidance provided by the Department but only after the passing of many months.

#### **Violations**

22. Based on the foregoing, the Department finds that Respondents violated Sections 2131 and 2324 of the Insurance Law and Regulation 194.

#### **AGREEMENT**

IT IS HEREBY UNDERSTOOD AND AGREED, by Respondents and the Department, that:

#### **Injunctive Relief**

23. Within 90 days of the Effective Date (as defined below) of this Consent Order, Respondents shall comply with the New York Insurance Law and regulation provisions specified in paragraph 22, as well as all other applicable laws and regulations.

#### **Monetary Penalty**

24. No later than ten (10) business days after the Effective Date of this Consent Order, Respondents shall pay a penalty of four million dollars (\$4,000,000) to the Department. The payment shall be made by wire transfer in accordance with the Department's instructions.

25. Respondents shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy



referenced in this consent order, or from any of its parents, subsidiaries, or affiliates, with regard to any or all of the amounts payable pursuant to this Consent Order.

26. Respondents shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

#### **Other Provisions**

27. Respondents submit to the authority of the Superintendent of Financial Services of the State of New York (the "Superintendent") to effectuate this Consent Order.

28. Respondents shall submit to the Department annual affidavits of compliance with the terms of this Consent Order for a period of six (6) years commencing from the Effective Date of this Consent Order.

29. If the Department believes Respondents to be in material breach of this Consent Order, the Department will provide written notice to Respondents and they must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is immaterial or has been cured.

30. Respondents' failure to make the required showing within the designated time period as set forth in paragraph 29 of this Consent Order shall be presumptive evidence of Respondents' material breach. Upon a finding by the Department that any Respondent has breached this Consent Order, the Department has all the remedies available to it under all applicable laws and may use any evidence available to it in connection with any ensuing hearings, notices, orders or other remedies that are available.

31. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondents, either directly or through counsel, and the Department's own factual investigation. To the extent that representations made by Respondents are later found to be materially incomplete or materially inaccurate, this Consent Order is voidable by the Superintendent in her sole discretion.

32. Upon the Department's request, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

33. Respondents represent and warrant, through the signature below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

34. All written communications to any party pursuant to this Consent Order shall be directed as follows.

**For the Department:**

Eugene Frenkel  
Associate Counsel, Enforcement  
New York State Department of Financial Services  
One State Street  
New York, NY 10004-1511

**For the Respondents:**

Gus Puryear  
Senior Vice President  
Asurion LLC  
648 Grassmere Park  
Nashville, TN 37211

With a copy to:

Ellen Dunn  
Andrew Holland  
Sidley Austin LLP  
787 Seventh Avenue  
New York, NY 10019

35. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

36. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations by the Department's Consumer Protection and Financial Enforcement Division up to and including the Effective Date of this Consent Order and agree that no provision of this Consent Order is subject to review in any court or tribunal outside of the Department.

37. This Consent Order is binding on the parties, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

38. The Consent Order may not be altered, modified, or changed unless in writing signed by the parties hereto.

39. The Consent Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

40. This Consent Order constitutes the entire agreement between the Department and Respondents and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

41. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

42. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

43. Upon the parties' execution of this Consent Order, the Department will discontinue the Investigation as to and against Respondents solely with respect to the practices set forth herein during the Relevant Period. No further action will be taken by the Department's Consumer Protection and Financial Enforcement Division against Respondents for the conduct set forth in this Consent Order provided they comply with the terms of the Consent Order.

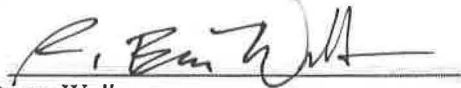
44. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law.

45. Except with regard to the enforcement of this Consent Order, Respondents' consent to the provisions of this Consent Order does not bar, estop, waive, or otherwise prevent Respondents from raising any defenses to any action taken by any federal or state agency or department, or any private action against Respondents.

46. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent or her designee (the "Effective Date").

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto  
on the dates set forth below.


**NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES**

By:   
R. Bruce Wells  
Associate Counsel  
Consumer Protection & Financial  
Enforcement Division

February 15, 2020


By:   
Christopher B. Mulvihill  
Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

February 25, 2020

By:   
Katherine A. Lemire  
Executive Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division


February 25, 2020

**ASURION INSURANCE SERVICES, INC.**

By:   
Gus Puryear  
Senior Vice President

February 25, 2020

**ASURION PROTECTION SERVICES,  
LLC**

By:   
Gus Puryear  
Senior Vice President

February 15, 2020

**THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.**

  
LINDA A. LACEWELL  
Superintendent of Financial Services

February \_\_, 2020