



# **Distributor Agreement**

**March 2014**

**Edition 1.0**

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## Parties

Licensee: Protecure Pty Ltd ABN 26 094 997 163  
Level 2, 151 Castlereagh Street, Sydney NSW 2000

Distributor: Name of individual:  
Name of financier/broker & ABN:  
Address:  
Contact Details:

## Background

- A The Licensee is a licenced General Insurance Underwriting Agency that acts for Chubb Insurance Company of Australia Limited (ABN 69 003 710 647, AFSL 239778)
- B The Licensee wishes to appoint the Distributor to deal in Asset Insurance on behalf of the Licensee on the terms and conditions set out in this agreement.

## Operative Provisions

### 1 Appointment of the Distributor

#### Appointment

- 1.1 The Licensee appoints the Distributor to Deal in the general insurance products listed on the Licensee's online quote tool from time to time, in accordance with and on the conditions set out in the Class Order and to provide Quotes, if requested by a client, on behalf of the Licensee.
- 1.2 The Distributor accepts the Appointment in clause 1.1.
- 1.3 The Appointment of the Distributor in clause 1.1 is made pursuant to the Class Order.

#### Relationship

- 1.4 The relationship that exists between the Licensee and the Distributor is of principal and agent. The Distributor is not in any way a partner, employee or authorised representative of the Licensee and must not represent itself as such in any circumstances.

#### Scope of Appointment

- 1.5 The Distributor may only provide the Authorised Financial Services and is not authorised to provide any other financial services on behalf of the Licensee.
- 1.6 Without limiting the generality of clause 1.5, the Distributor must not provide Financial Product Advice on behalf of the Licensee.
- 1.7 The Distributor cannot insist that any customer or person(s) takes out the Licensee's insurance in connection with a finance contract.
- 1.8 The Distributor cannot contract out or delegate any of its obligations or responsibilities under this agreement, other than in accordance with this agreement.
- 1.9 The Distributor cannot act as a distributor of another AFS Licensee or as an authorised representative of an AFS Licensee without the written consent of the Licensee. The Licensee will not unreasonably withhold such consent.

### 2 Obligations of the Distributor

#### Compliance

- 2.1 The Distributor will provide the Authorised Financial Services in accordance with the:
  - 2.1.1 requirements of the Relevant Law;
  - 2.1.2 conditions of the Licensee's AFS Licence; and
  - 2.1.3 terms and conditions of this agreement.
- 2.2 The Distributor must seek directions from the Licensee if the Distributor is in doubt as to whether an activity might constitute providing Financial Product Advice on behalf of the Licensee.

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- 2.3 The Distributor must comply with any direction provided by the Licensee pursuant to clause 2.2.
  - 2.4 The Distributor must comply at all times with the National Privacy Act 1988 & any successor legislation.
  - 2.5 The Distributor must comply with the Licensee's Privacy Policy at all times. The Licensee's Privacy Policy is available at [www.protecure.com.au](http://www.protecure.com.au)
  - 2.6 The Distributor must not do or purport to do anything on behalf of the Licensee other than as permitted under this agreement.
  - 2.7 The Distributor will comply with all compliance, risk management or other policies and procedures notified to it by the Licensee.
  - 2.8 The Distributor must comply at all times with the Class Order and all future amendments of the Class Order.

### **Provision of information**

- 2.9 The Distributor will provide the Licensee with all information necessary (and within the time necessary) for the Licensee to comply with its obligation under the Relevant Law and the conditions of its AFS Licence.
- 2.10 The Distributor will make all disclosures and provide all documents to customers when it is providing the Authorised Financial Services as may be required by, and on any terms stipulated by, the Licensee.

### **Advertising**

- 2.11 The Distributor must not engage in any media or advertising campaign including by website, radio, print or television for the Authorised Financial Services, without first obtaining the written consent of the Licensee.

### **Other obligations**

- 2.12 Without limiting the generality of this clause 2 the Distributor must comply with the specific obligations set out in Schedule 1 of this agreement.

## **3 Remuneration**

### **3.1 Fees**

- 3.1.1 For any customer referred to Protecure by the Distributor that obtains an insurance policy with Protecure, the Distributor is entitled to a fee of 10% (exclusive of GST) of the initial premium before taxes and charges paid by that Referred Customer for that insurance policy (Distributor Fee).
- 3.1.2 Where a Referred Customer cancels a Protecure insurance policy, and Protecure refunds a portion of the premium to the Referred Customer, the Distributor will:
  - (i) be entitled to retain a portion of the Distributor Fee on a pro rata basis in relation to that insurance policy; and
  - (ii) refund to Protecure any component of the Distributor Fee paid to the Distributor that relates to the unexpired portion of the premium on a pro rata basis.

### **3.2 Payment**

- 3.2.1 Protecure will send a monthly fee statement to the Distributor setting out:
  - (i) the premiums paid by each corresponding Referred Customer in the preceding month;
  - (ii) the total amount of the Distributor's entitlement to 10% fees in the preceding month (Entitlement Amount); and
  - (iii) any cancellation or expiry of any insurance policy held by any Referred Customer.
- 3.2.2 The Referrer will, within 10 business days of receiving the monthly fee statement, issue a tax invoice in the amount of the Entitlement Amount to Protecure for payment.

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## 4 Appointment Period and Termination

### Term

- 4.1 The Appointment commences on the date of signing this agreement and continues until terminated in accordance with this agreement.

### Termination

- 4.2 Subject to clause 4.3:
- 4.2.1 the Licensee may terminate this agreement by giving notice in writing to the Distributor; and
  - 4.2.2 the Distributor may terminate this agreement by giving 1 month's notice in writing to the Licensee.
- 4.3 The Appointment will terminate immediately if:
- 4.3.1 The Distributor can no longer fulfil its obligations under this agreement;
  - 4.3.2 ASIC informs the Licensee that it considers that the Distributor's involvement in the provision of financial services on behalf of the Licensee will significantly impair the Licensee's ability to meet its obligations under Chapter 7 of the Corporations Act or its AFS Licence Conditions; or
  - 4.3.3 a banning or disqualification order is made against the Distributor in accordance with section 915C(1) of the Corporations Act.

### Consequences of Termination

- 4.4 On termination of this agreement or the Appointment, the Distributor shall, if requested by the Licensee, provide all reasonable assistance to the Licensee in the orderly transfer of the Appointment, functions and operations provided in accordance with this agreement to another service provider or to the Licensee itself.
- 4.5 On termination of this agreement or the Appointment, the Distributor shall return all originals and copies of this agreement to the Licensee.

### Clauses Surviving Termination

- 4.6 Clauses 5, 7, 8 and 9 survive termination of this agreement.

## 5 Indemnity

- 5.1 The Distributor agrees to indemnify the Licensee against any loss, damage, liability or expense incurred by the Licensee arising directly or indirectly from:
- 5.1.1 a breach of this agreement; or
  - 5.1.2 any negligent, reckless or wilful act or omission of the Distributor, any employees of the Distributor or any person for whom the Distributor is responsible at law.
- 5.2 Where the Licensee consents to the appointment of the Distributor as an authorised representative or distributor of another AFS licensee under clause 1.9, the Distributor agrees, from the date that consent is granted, to indemnify the Licensee against any loss, damage, liability or expense incurred by the Licensee arising directly or indirectly from any negligent or wilful act, error or omission of the Distributor (whether inside or outside the authority given to the Distributor by the other AFS licensee), by the Distributor in the Distributor's capacity as authorised representative or distributor of the other AFS licensee.
- 5.3 To avoid doubt, the indemnity in clause 5.1 and 5.2, applies to any liability that the Licensee has to pay or bear any excess or deductible under any insurance policy or other similar arrangement taken out by the Licensee to cover acts or omissions of the Distributor.

## 6 Warranty

- 6.1 The Distributor warrants that it has fully disclosed to the Licensee all material information and circumstances known to it which would be likely to affect the Licensee's decision to enter into this agreement.

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- 6.2 Without limiting the generality of clause 6.1, the Distributor warrants that it has fully disclosed to the Licensee whether the Distributor acts as distributor or authorised representative of any other AFS Licensee.

## **7 Insurance**

- 7.1 The Licensee must maintain at its expense, during this agreement, professional indemnity insurance covering the Distributor and will provide evidence of such insurance to the Distributor as requested.
- 7.2 If a claim is made by the Licensee on its insurer under its professional indemnity policy for which the whole or part of the excess under the policy is payable, the Distributor will reimburse the Licensee the amount of such excess immediately on its becoming payable to the insurer if a claim arises by reason of the acts or omissions of the Distributor for its business activities undertaken & performed in connection with its appointment as a Distributor to the Licensee.

## **8 Confidential Information**

- 8.1 During and after termination of this agreement, each party must keep confidential and must not use the other party's Confidential Information except as necessary to perform this agreement or as required by law.
- 8.2 If a government, regulatory authority or court orders a party to disclose Confidential Information, that party will, to the extent permitted, immediately advise the other party and will disclose only such of the Confidential Information necessary to comply with the order.
- 8.3 Nothing in this clause 8 restricts the use or dissemination of Confidential Information obtained lawfully from a third party.
- 8.4 Each party authorises the other to disclose its Confidential Information to its auditors, professional agents and advisors and any related bodies corporate.

## **9 Notices**

### **Giving notices**

- 9.1 A notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:
- 9.1.1 Delivered or posted to that party at its address set out below.
- 9.1.2 Faxed to that party at its fax number set out below.
- 9.1.3 Email to the party at its email address below

#### **Licensee**

Address: Level 2, 151 Castlereagh Street, Sydney NSW 2000

Email: info@protecsure.com.au

Attention: John Turner

#### **Distributor**

See section "Parties to this Deed"

### **Change of address or fax number**

- 9.2 If a party gives the other party 3 business days notice of a change of its office address or email address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

### **Time notice is given**

- 9.3 A notice, consent, information, application or request is to be treated as given or made at the following time:
- 9.3.1 If it is delivered, when it is left at the relevant address.
- 9.3.2 If it is sent by post, 2 business days after it is posted.
- 9.3.3 If it is sent by email, as soon as the sender receives from the sender's email a report of an error-free transmission to the correct fax email address.

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- 9.4 If a notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **10 Miscellaneous**

### **Approvals and consent**

- 10.1 Except as otherwise set out in this agreement, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or for giving a consent subject to conditions.

### **Assignment**

- 10.2 A party must not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

### **Costs**

- 10.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

### **Entire agreement**

- 10.4 This agreement contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.

### **Execution of separate agreements**

- 10.5 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

### **Further acts**

- 10.6 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

### **Goods and Services Tax**

- 10.7 A party must pay GST on a taxable supply made to it under this agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST. Terms used in this clause have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999.

### **Governing law and jurisdiction**

- 10.8 This agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Severability**

- 10.9 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

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## Variation

- 10.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

## Waiver

- 10.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 11 Definitions & Interpretations

- 11.1 Unless otherwise defined in this agreement words that have a defined meaning in the Corporations Act 2001 have the same meaning in this agreement.

- 11.2 In this agreement the following definitions apply:

**Appointment** means the appointment to provide Authorised Financial Services in clause 1.1

**Authorised Financial Services** means the financial services listed in clause 1.1.

**AFS Licence** means an Australian financial services licence.

**ASIC** means the Australian Securities and Investments Commission.

**Commencement Date** means {insert a commencement date for the agreement}

**Class Order** means ASIC Class Order 05/1070.

**Confidential Information** means all information, data, practices and techniques relating to a party, or a related body corporate, customers, competitors, business, operations, strategies, computer systems, marketing systems and intellectual property or other property of which the other party becomes aware in negotiating or performing this agreement and the terms of this agreement and arranging or issuing policies of insurance.

Confidential Information does not include information that is in the public domain or later comes into the public domain (unless it came into the public domain by a breach of confidentiality or this agreement).

**Corporations Act** means the Corporations Act 2001 and any regulations made pursuant to that legislation.

**Deal** has the meaning given in Chapter 7 of the Corporations Act.

**Financial Product Advice** has the meaning given in Chapter 7 of the Corporations Act.

**Premium** means the amount received by the Licensee in relation to an insurance policy (including stamp duty, GST and any other statutory charges).

**Quotes** means the acts of telling the customer the cost, or estimating the likely cost of the insurance product provided by the Licensee, pursuant to section 766B(6) of the Corporations Act.

**Relevant Law** means all legislation and regulation that relates to the Authorised Financial Services and Licensee's AFS Licence, including but not limited to, the Corporations Act and the Australian Securities and Investments Commission Act 2001 (Cth) and the Class Order.

## Interpretation

- 11.3 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

11.3.1 Headings are inserted for convenience only and do not affect the interpretation of this agreement.

11.3.2 A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales.



- 11.3.3 If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.
- 11.3.4 A reference in this agreement to dollars or \$ means Australian dollars all amounts payable under this agreement are payable in Australian dollars.
- 11.3.5 A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 11.3.6 A reference in this agreement to any agreement or agreement is to that agreement or agreement as amended, novated, supplemented or replaced.
- 11.3.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.
- 11.3.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 11.3.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 11.3.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 11.3.11 References to the word 'include' or 'including' are to be construed without limitation.
- 11.3.12 A reference to this agreement includes the agreement recorded in this agreement.
- 11.3.13 Any schedules and attachments form part of this agreement.

**Execution and Date**

Executed as an agreement

Date: .....

Signed for and on behalf of the **Licensee** in the presence of:

.....  
Signature of witness

.....  
Signature of authorised person

.....  
Name of witness (print)

.....  
Name of authorised person (print)

Signed for and on behalf of the **Distributor** in the presence of:

.....  
Signature of witness

.....  
Signature of the Distributor

.....  
Name of witness (print)

.....  
Name of authorised person (print)

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## Schedule 1

### 1 Distributor general obligations

- 1.1 The Distributor must comply with the following obligations:
  - 1.1.1 At all times work diligently to protect and promote the interests of the Licensee.
  - 1.1.2 Only enter into contractual arrangements with clients on behalf of the Licensee on the terms and conditions stipulated by the Licensee from time to time.
  - 1.1.3 Transact all financial services provided on behalf of the Licensee through and in the name of the Licensee.
  - 1.1.4 Do nothing which would or might give any person or client the impression, or hold out, that the Distributor is conducting a financial services business in its own right.
  - 1.1.5 Before or at the time of providing any services to a client provide the client with the Licensee's FSG.
  - 1.1.6 Provide the client with all other information and notices required by the Relevant Law, including but not limited to product disclosure statements, statements of advice, confirmation and cooling-off notices.
  - 1.1.7 Pass notice of any claims received by the Distributor on to the Licensee and/or insurer.
  - 1.1.8 Advise a retail client of the availability of the Licensee's dispute resolution system and how that system can be accessed.
  - 1.1.9 Give information to a retail client in writing about:
    - (a) the Licensee, with such information to be approved by the Licensee; and
    - (b) any remuneration (including commission) or other benefits that the Distributor, or an associate of the Distributor, may receive in respect of, or that is attributable to, the provision of the services under this agreement.

### 2 Distributor's obligations in relation to money handling

- 2.1 The Distributor must not:
  - 2.1.1 Collect premium or payment of any kind from the customer
  - 2.1.2 Extend or change the licensee's standard payment terms
  - 2.1.3 Extend or change the quote provided to the Customer by Protecsure
  - 2.1.4 Incur costs or charges on behalf of the licensee or any Insurer
  - 2.1.5 Receive any financial or non-financial benefits as a result of the appointment to the Licensee as a Distributor other than remunerations or other benefits paid by the Licensee.