

IMPOUNDMENT OF PROCEEDS AGREEMENT

This Impoundment of Proceeds Agreement (“Agreement”) was entered into on the _____ day of _____, _____, by and between _____ (“Agent”), a (state) (national) bank, whose principal place of business is located in _____, _____, and _____ (“Issuer”), whose principal place of business is located in _____, _____, and (if applicable) _____, (“Underwriter”), a registered broker-dealer in _____ whose principal place of business is located in _____, _____, (all of whom are herein collectively referred to as “Signatories”). The Signatories agree that:

An application to register the Issuer’s securities for offer and sale to public investors (“Public Offering”) has been filed with the Securities Administrator of the State of _____ (“Administrator”).

As a condition to registering the Public Offering, the Administrator has required, and the Issuer (and Underwriter) has (have) agreed, that the gross proceeds which the Issuer (Underwriter) receives from the Public Offering (“Impounded Funds”) shall be promptly deposited into a segregated account (“Impoundment Account”) with the Agent until a minimum of \$ _____ of Impounded Funds has been deposited into the Impoundment Account. The Agent shall hold and administer the Impounded Funds in accordance with the terms of this Agreement.

I. DEFINITIONS. The following definitions shall apply to this Agreement.

A. An AFFILIATE is a PERSON who, directly or indirectly, CONTROLS, is CONTROLLED by, or is under common CONTROL with the PERSON specified herein.

B. An ASSOCIATE, when used to indicate a relationship with a PERSON, includes:

1. Corporations or legal entities, other than the Issuer or majority-owned subsidiaries of the Issuer, of which a PERSON is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of EQUITY SECURITIES;
2. Trusts or other estates in which a PERSON has a substantial beneficial interest or for which a PERSON serves as a trustee or in a similar capacity; and
3. A PERSON’s spouse and relatives, by blood or by marriage, if the PERSON is a PROMOTER of the Issuer, its subsidiaries, its AFFILIATES, or its parent.

C. CONTROL is the power to direct or influence the direction of the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract or otherwise.

D. EQUITY SECURITIES include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into, or exercised to purchase, shares of common stock or similar securities.

E. An IMPOUNDMENT AGENT is either a state chartered bank or a federally chartered bank (supervised by the Office of the Comptroller of the Currency) that is domiciled and whose principal place of business is located in the United States and whose deposits are insured by the FDIC.

F. A PERSON is an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government, or any other legal entity.

G. A PROMOTER may include:

1. A PERSON who, alone or in conjunction with one or more PERSONS, directly or indirectly, took the initiative in founding or organizing the Issuer or CONTROLS the Issuer;
2. A PERSON who, directly or indirectly, receives, as consideration for services and/or property rendered, five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or five percent (5%) or more of the proceeds from the sale of any class of the Issuer's EQUITY SECURITIES. A PERSON, who receives securities or proceeds solely as underwriting compensation, is excluded from the definition of PROMOTER if that PERSON falls outside the definitions of I.G.1., above, or I.G.3., 4., or 5., below;
3. A PERSON who is an officer or director of the Issuer;
4. A PERSON who legally or beneficially, directly or indirectly, owns five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES ("5% shareholder") if that PERSON was in CONTROL of the Issuer at the time of acquiring five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or if that PERSON is in CONTROL of the Issuer at the time of the public offering of the Issuer's EQUITY SECURITIES;
or
5. A PERSON who is an AFFILIATE or an ASSOCIATE of a PERSON specified in I.G.1., 2., 3., or 4., above.

H. An UNDERWRITER is any PERSON who has agreed with the Issuer or other PERSON on whose behalf a distribution is to be made:

1. To purchase securities for distribution;
2. To distribute securities for or on behalf of the Issuer or other PERSON;
or
3. To manage or supervise a distribution of securities for or on behalf of the Issuer or other PERSON.

II. QUALIFICATIONS OF THE IMPOUNDMENT AGENT. The Agent represents that:

- A. It is a state chartered bank or federally chartered bank, which is regulated by a state regulatory banking authority, the Federal Reserve, or the Office of the Comptroller of the Currency;
- B. Its domicile and principal place of business are in the United States;
- C. Its deposits are insured by the FDIC;
- D. It will hold and administer the Impounded Funds pursuant to the terms of this Agreement; and
- E. It is neither affiliated with, nor a major creditor of, the Issuer, its Promoters, or their Affiliates or Associates.

III. DEPOSIT AND APPLICATION OF THE IMPOUNDED FUNDS. As long as this Agreement remains in effect:

- A. The Issuer (Underwriter) shall instruct public investors (“Subscribers”) to make their checks, drafts, money orders, or wire transfers (“Payments”) payable to the Agent, for deposit in _____ Impoundment Account;
- B. Any Payment that is made payable to any Person other than the Agent, shall be returned by the Agent by mail to the Subscriber on the first business day (excluding legal holidays) following the Agent’s receipt of such Payment;
- C. The Issuer (Underwriter) shall transmit the Subscribers’ Payments, not later than 12:00 noon on the first business day (excluding legal holidays) following the receipt thereof, to the Agent for deposit into the Impoundment Account;
- D. The Agent shall refuse to accept Subscribers’ Payments unless:

1. The Payments are made for the full amount of the subscriptions; and
2. The Payments are accompanied by properly executed subscription agreements and all requisite accompanying documents;

E. Contemporaneous with the Agent's acceptance of the Subscribers' Payments, the Issuer (Underwriter) shall provide the Agent with:

1. The Subscribers' names, address, telephone numbers, and tax identification numbers; and
2. Copies of completed, executed subscription agreements that:
 - a. Have been accepted by the Issuer;
 - b. Specify the amount of securities that each Subscriber has purchased; and
 - c. Specify the amount of monetary consideration that each Subscriber paid;

F. Unless it is extended, under IV.C., below, the Agent shall not accept Subscribers' Payments received after _____ (the "Agreement's Termination Date").

G. The Agent shall keep the Subscribers' Payments as Impounded Funds, segregated in an Impoundment Account for investment purposes, until they are released to the Issuer ("released") or returned to the Subscribers ("returned") pursuant to IV.A. or IV.B., below;

H. The Agent shall promptly invest the Impounded Funds and any interest earned thereon in short-term, investment-grade, interest-bearing securities or money market funds investing in U.S. Government Securities ("Investments");

I. The Agent shall redeem or terminate the Investments when the Impounded Funds are released or returned pursuant to IV.A. or IV.B., below;

J. The Agent shall not be liable for any forfeiture of interest that may result from the redemption or termination of the Investments when the Impounded Funds are released or returned pursuant to IV.A. or IV.B., below;

K. When the Impounded Funds are released or returned pursuant to IV.A. or IV.B., below, the interest earned on the Investments ("interest") shall either be paid to the Issuer or the Subscribers, as prescribed by the subscription agreement;

L. Interest that is to be paid to the Subscribers, shall be paid without deducting the Agent's fees, compensation or expenses; and

M. The amount of interest that is to be paid to each Subscriber, shall be based on:

1. The amount of each Subscriber's Payment that was deposited into the Impoundment Account; and
2. The number of days that each Subscriber's Payment was held by the Agent as Investments.

IV. RELEASE OR RETURN OF THE IMPOUNDED FUNDS. Unless the Agreement's Termination Date is extended pursuant to IV.C., below, the Impoundment Funds shall be released or returned pursuant to IV.A. or IV.B., below, upon the earliest occurrence of one of the following events.

A. The Agent shall release the Impounded Funds after:

1. The Agent has given to the Administrator an affidavit which states that a minimum of \$ _____ of Impounded Funds has been deposited into the Impoundment Account prior to the Agreement's Termination Date; and
2. The Issuer has given to the Administrator, and the Agent, an affidavit, signed by the Issuer's Chief Executive Officer and the Chief Financial Officer, which states that:
 - a. There have been no material changes in the financial condition of the Issuer or other material changes of circumstances that would render the amount of Impounded Funds inadequate to finance the Issuer's proposed plan of operations, business, or enterprise; and
 - b. No material omissions or changes have occurred that would render the representations in the prospectus fraudulent, false, or misleading.

B. The Impounded Funds shall be promptly and directly returned to the Subscribers with or without interest, depending upon the terms of the Subscription Agreement, and without deduction for the Agent's compensation, fees, or expenses, if:

1. A minimum of \$ _____ of Impounded Funds has not been deposited into the Impoundment Account within the time prescribed by IV.A.1., above, or if applicable IV.C., below;

2. The Public Offering has been terminated prior to the deposit of a minimum of \$ _____ of Impounded Funds into the Impoundment Account, and the Issuer (Underwriter) has given notice to the Agent of the Public Offering's termination; or

3. The Administrator has revoked or suspended the effectiveness of the Public Offering prior to the deposit of \$ _____ of Impounded Funds into the Impoundment Account, and the Administrator has given notice thereof to the Agent.

C. The Agreement's Termination Date may be extended for _____ days beyond the _____ day of _____, _____, provided that:

1. The prospectus disclosed that the Agreement's Termination Date might be extended for _____ days beyond the _____ day of _____, _____;

2. The Agent has received a written notice for an extension from the Issuer (Underwriter) prior to the Agreement's Termination Date;

3. Prior to the Agreement's Termination Date, the Agent has received notice from the Administrator allowing the extension thereof; and

4. The Issuer (Underwriter) has notified each Subscriber by first class mail of the extension, and has given notice to the Agent that notifications of the extension have been mailed.

V. ADVERSE CLAIMS OR DEMANDS.

A. If any controversy regarding the Impounded Funds arises between the parties hereto or with any third person, the Agent shall not be required to resolve the matter or to take any action, but may await the settlement of any such controversy by final appropriate legal proceedings, or otherwise as the Agent may require, or the Agent may, in its discretion, institute such appropriate interpleader or other proceedings in connection therewith as it may deem proper, notwithstanding anything in this Agreement to the contrary. In any such event, the Agent shall not be liable for interest or damages to the Issuer or the Subscribers.

B. Impounded Funds are neither assets of the Issuer, nor are they subject to claims of, or demands by, creditors of the Issuer unless and until the Impounded Funds have been released to the Issuer pursuant to IV.A., above.

C. Impounded Funds are neither assets of the Agent (or the Underwriter), nor are they subject to the claims of, or demands by, the creditors of the Agent (or Underwriter).

VI. RELIANCE BY THE IMPOUNDMENT AGENT.

- A. The Agent shall not be a party to, or be bound by, any agreements involving the Issuer and the Subscribers, unless it is a signatory thereto.
- B. The Agent shall act as a depository only, and its sole responsibility shall be to act in accordance with the expressed terms set forth in this Agreement.
- C. The Agent shall be protected if it acts in good faith upon any statement, certificate, notice, request, consent, order, or other document which it believes to be genuine, conforms with the terms of this Agreement, and is signed by the proper party (parties).
- D. The Agent may consult with legal counsel in regards to any question arising under this Agreement.
- E. The Agent shall not be liable for any action taken or omitted, in good faith, upon the advice of legal counsel.
- F. The Agent shall be under no obligation to institute or defend any action, suit, or proceeding, in connection with this Agreement (“Proceedings”), unless and until it receives reasonable indemnification and advancement of fees and costs therefor (unless the Proceedings arise from the Agent’s failure to abide by the terms of this Agreement).
- G. The Agent shall not be liable to the Issuer or the Subscribers for any damage, loss, expense or liability incurred while acting as the Impoundment Agent, unless the damage, loss, expense, or liability arises from the Agent’s failure to abide by the terms of this Agreement.
- H. The Agent shall be under no duty or obligation to enforce the collection of a Subscriber’s check.
- I. The Agent, within a reasonable time, shall return Subscribers’ checks that are dishonored and any documents that accompanied the checks.

VII. IMPOUNDMENT AGENT’S COMPENSATION, FEES, AND EXPENSES.

- A. The Agent shall be compensated at its customary rate, as agreed to by the Issuer and Agent, for the services that it performs pursuant to this Agreement, as set forth in Exhibit A., which is attached hereto and made a part hereof; and
- B. The Agent’s compensation relating thereto, and all reasonable fees and expenses incurred in connection therewith, shall be paid by the Issuer.

VIII. IMPOUNDMENT AGENT'S INDEMNIFICATION. The Issuer agrees to hold the Agent harmless from, and indemnify the Agent for, any cost or liability regarding any administrative proceeding, investigation, litigation, interpretation, or implementation relating to this Agreement, including the release or return of Impounded Funds and interest earned on Investments, unless the cost or liability arises from the Agent's failure to abide by the terms of this Agreement.

IX. SUCCESSOR IMPOUNDMENT AGENT.

A. The Agent may resign as the Impoundment Agent after giving not less than sixty (60) days written notice to the Issuer (and Underwriter), the Subscribers, and the Administrator.

B. The Issuer shall appoint a successor Agent and enter into a substantively identical Agreement with it before the effective date of the Agent's resignation.

C. Unless otherwise authorized by the Administrator, the successor Agent must meet the qualifications of II., above.

D. Notwithstanding the resignation provisions of IX.A., above:

1. If the Issuer fails to appoint, or enter into a substantively identical Agreement with, a successor Agent before the effective date of the Agent's resignation, the Agent shall retain the Impounded Funds in accordance with the terms of this Agreement, without liability, until a successor Agent has been appointed and a substantively identical Agreement has been executed; and

2. If the Issuer fails to appoint, or enter into a substantively identical agreement with, a successor Agent within thirty (30) days after the Agent's resignation, all monies shall be returned to the Subscribers and the Impoundment Agreement shall be terminated.

E. Upon acceptance of the appointment as the successor Agent ("acceptance"), the successor Agent shall:

1. Enter into a substantively identical Agreement;

2. Transmit copies of its written acceptance to the Subscribers;

3. Transmit a copy of its written acceptance and a substantively identical Agreement to the Administrator (and Underwriter);

4. Receive the Impounded Funds held by the predecessor Agent, and deposit them into an Impoundment Account; and

5. Succeed to all of the rights and duties of Agent.

F. The Agent shall not be responsible for the appointment and qualifications of a successor Agent.

X. RECORDS. The Agent shall keep and maintain records and documents (“records”) that disclose the names, addresses, telephone numbers, and tax identification numbers of the Subscribers, the amount and date of securities purchased and the Payment(s) made by each Subscriber, and a record of the release or return of the Impounded Funds (if applicable).

XI. AVAILABILITY AND INSPECTION OF THE IMPOUNDMENT ACCOUNT AND RECORDS. The Agent shall furnish to the Administrator, upon request, true, correct, complete and current copies (“copies”) of the Impoundment Account and the records.

XII. SCOPE OF THE IMPOUNDMENT AGREEMENT. This Agreement shall inure to the benefit of, and be binding upon, the Issuer, (Underwriter), the Agent, and their successors, the Subscribers and their heirs, assignees, beneficiaries, executors, administrators, and their legal representatives, and, if applicable, the Administrator and his or her successors.

XIII. CHOICE OF LAW. This Agreement shall be interpreted and construed in accordance with, and be governed by, the internal laws of the State of

_____.

XIV. TERMINATION OF THE IMPOUNDMENT AGREEMENT. Except for the compensation, fees, expenses, and indemnification provisions, pursuant to VII. and VIII., above, which shall survive until they are satisfied, this Agreement shall terminate in its entirety when all of the Impounded Funds (and the interest earned on Investments if applicable) have been released or returned pursuant to IV.A. or IV.B., above.

XV. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

XVI. EFFECTIVE DATE OF THE IMPOUNDMENT AGREEMENT. This Agreement shall become effective on the _____ day of _____, _____.

IN WITNESS WHEREOF, the Signatories, below, have executed this Impoundment Agreement by the following officers duly authorized.

ISSUER: _____

By: _____

Its: _____

IMPOUNDMENT AGENT: _____

By: _____

Its: _____

UNDERWRITER: _____

By: _____

Its: _____

ADMINISTRATOR: _____

By: _____

Its: _____