

**INSURANCE BOARD
GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA**



**FSM Insurance Board
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Escrow Account Agreement

SCHEDULE 5(E-3)

ESCROW ACCOUNT AGREEMENT

This Escrow Agreement is made as of _____ by and among:

- (1) THE INSURANCE BOARD OF THE FEDERATED STATES OF MICRONESIA (the "Board"), a statutory authority organized pursuant to Section 201 of Title 29 and Section 201 of Title 37 of the Code of the Federated States of Micronesia;
- (2) _____ ("the Insurer"), whose principal place and address of business is _____; and,
- (3) _____ ("the Bank"), a bank or financial institution duly authorized to do business in the Federated States of Micronesia, whose principal place of business within the Federated States of Micronesia is _____, (all of the foregoing being hereinafter referred to hereafter as the "Parties").

WHEREAS:

- 1. Subsection 1(b) of section 307 of Title 37 of the Code of the Federated States of Micronesia requires that foreign insurers may be registered by posting a bond or deposit to an escrow account in the sum of \$100,000, to be withdrawn by the Insurance Commissioner upon the occurrence of certain events as stated in the bond or escrow account;
- 2. Subsection 5 of section 301 of Title 37 of the Code of the Federated States of Micronesia requires a foreign insurer receiving two million dollars or more in income from premiums collected in the Federated States of Micronesia in each fiscal year for three consecutive years shall be required to become licensed;
- 3. By entering into this Escrow Agreement, Insurer represents that its income for each fiscal year for the past three consecutive fiscal years, has been less than \$2 million, hence, it is not required under the law to obtain an insurance license. The Insurer undertakes to notify the Board if this situation is changed; and
- 4. The Board and Insurer desire that the Bank to hold the Escrow Amount pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and the mutual promises contained herein, and intending to be legally bound, the Parties hereto agree as follows:

Article 1
Escrow Account

- 1.1 Insurer shall deposit the Escrow Amount with the Bank, which deposit may be in the form of a certificate of deposit. The deposit shall form the Escrow Account and the name of the Escrow Account shall reflect that it is for the benefit of the Board. Upon receipt of the Escrow Amount, the Bank shall notify the Board that the Escrow Amount has been deposited with the Bank.
- 1.2 All fees, charges and costs to establish, maintain and close the Escrow Account with the Bank, including but not limited to, processing fees, transaction fees and maintenance fees, shall be paid by the Insurer. In the event such fees, charges and costs are not paid by the Insurer, the Bank may deduct such charges first against any interest income generated by the Escrow, and second against the Escrow Account in the absence of any interest or whatever any such interest is insufficient. The Bank will pay interest on balances in the Escrow Account to Insurer, subject to any tax withholding requirements applicable in the FSM. Insurer shall pay taxes, if any, on interest income generated by the Escrow. The Board is not liable for any fees, charges and costs in connection with the Escrow Account.
- 1.3 Insurer may subsequently increase the Escrow Amount by depositing additional funds in the Escrow Account. The Insurer shall notify the Board of such additional deposits, which shall be confirmed by the Bank. Insurer and Bank shall renew the Escrow Account from time to time and shall take such other steps as shall be necessary to ensure that the Escrow Account does not become dormant under applicable law.
- 1.4 In no event must the Escrow Account fall below the minimum amount of \$100,000, net of all applicable fees, charges and costs alluded to under Clause 1.2. The Bank shall notify the Insurer and the Board in writing whenever the Escrow Account becomes less than \$100,000. The Insurer has an obligation to replenish, within a period of 10 business days from the date of notice, the Escrow Account to maintain at all times a minimum amount of \$100,000. If the Insurer does not replenish the Account within the agreed upon time, the Bank may close the Account and send the balance, if any, to the Board. Once the Money is transferred to the Board, the obligation of the Bank to any party is extinguished.

Article 2

Payment of Escrowed Funds

- 2.1 Bank shall pay the funds from the Escrow Account, less reasonable fees, costs, charges and expenses, a schedule of which shall be furnished to the Parties prior to any deduction, to the following Parties under the following conditions:
- 2.1.1 To the Board upon receipt by Bank of a written demand from the Board (the "Demand") attaching a final judgment rendered against Insurer by a court of competent jurisdiction within the Federated States of Micronesia with respect to any insurance business (as defined in 37 FSMC section 102(12)) conducted by the Insurer in the Federated States of Micronesia (any such judgment being referred to herein as a "Judgment"), together with a certificate signed by the Clerk of the court rendering the Judgment, or the party in whose favor the Judgment was rendered, stating that such Judgment has not been fully satisfied by Insurer within thirty (30) days following the date such Judgment became final and non-appealable to any other court or tribunal.
- 2.1.2 To the Insurer upon receipt by Bank of a written notice signed by both Insurer and the Board that Insurer is no longer registered as a foreign insurer pursuant to Title 37 section 307 of the Federated States of Micronesia Code and that there are no outstanding claims or judgment pending against the Insurer.
- 2.2 Upon receipt of the Demand specified in section 2.1.1, Bank shall promptly deliver the full Escrow Amount to the Board, regardless of the pecuniary or non-pecuniary nature or the amount of the Judgment. The Bank shall then close the Escrow Account and its obligations to the Board and the Insurer are to be deemed satisfied. The Board shall apply the Escrow Amount to the satisfaction of any monetary obligations imposed by the Judgment and may hold such Escrow Amount to secure performance of non-pecuniary obligations pursuant to the Judgment. Following satisfaction of the Judgment, the Board shall be entitled to hold any balance of the Escrow Amount for a period of two (2) years following such satisfaction in order to secure the satisfaction of any additional Judgments that may be rendered against Insurer, following which time the Board shall return the remaining principal balance of the Escrow Amount, if any, to Insurer.
- 2.3 The Bank shall send any required statements to the Insurer and the Board and shall notify the Parties of any Escrow Account activity (i.e.: withdrawals and deposits).
- 2.4 No changes in these instructions are permitted other than with the written agreement of the Board and the Insurer.

2.5 Except for the fees, charges and costs explicitly allowed in this Agreement, the Bank shall have no right to set off credit balances in the Escrow Agreement against amounts owed to the Bank by the Insurer or the Board. The parties understand that the Escrow Account cannot be encumbered in any way or used as a form of collateral or security for a transaction other than a purpose stated in this Agreement.

Article 3
Indemnification and Liability

3.1 The parties are not liable to each other for any claims, liabilities or injuries arising from the proper performance of their duties and obligations under this Agreement.

3.2 The Board does not waive its immunity or limitation of liability to the extent granted under Chapter 7, title 6 of the FSM Code, or any other laws.

Article 4
Disputed Amounts

4.1 If any portion of the Escrow Amount specified in the Demand is in dispute with the Insurer, or if the finality and satisfaction of any Judgment to which the Demand refers is likewise unclear or in dispute, the Bank shall nevertheless be required to pay the Escrow Amount to the Board upon receipt of the Demand and shall incur no liability to the Insurer with respect to such payment.

Article 5
Notices

5.1 All notices entitled or required to be given under this Agreement shall be in writing and shall be sent by (a) certified mail, return receipt requested, postage paid or (b) by hand delivery, to the following addresses:

If to Bank:

Contact Person: _____ Title _____

Address: _____

e-mail address: _____

Phone: _____

Fax: _____

If to Insurer:

Contact Person: _____ Title _____

Address: _____

e-mail address: _____

Phone: _____

Fax: _____

If to Board:

Contact Person: _____ Title _____

Address: _____

e-mail address: _____

Phone: _____

Fax: _____

5.2 The execution of this Agreement constitutes on the part of the Insurer “the written authorization of the customer or his legal representative”, as the phrase is used as exception from the prohibition on disclosure required under Section 704, title 29, of the FSM Code. As such authorization, the Bank has no liability for any notice or disclosure made to the Board pursuant to the terms of this Agreement.

**Article 6
Entire Agreement**

6.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, whether written or oral. This Agreement may only be amended or modified by a written agreement signed by all of the Parties hereto.

**Article 7
Governing Law**

7.1 This Agreement shall be governed by and construed under the laws of the Federated States of Micronesia. The proper forum for the resolution of disputes hereunder shall be the Trial Division of the Supreme Court of the Federated States of Micronesia, and the Parties each submit to the jurisdiction of that Court.

Article 8
Miscellaneous

- 8.1 A Party may assign its obligations and rights under this Agreement only with the other Party's prior written consent.
- 8.2 This Escrow Agreement may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Escrow Agreement by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Signature pages transmitted via telecopier shall be valid as original and shall serve as determinative evidence of execution by the transmitting Party.

[ESCROW ACCOUNT No.: _____]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Board: By: _____ Signature: _____
Title _____

Insurer: By _____ Signature: _____
Title _____

Bank: By _____ Signature: _____
Title _____

Legal Sufficiency Determined:

Secretary
Department of Justice
Federated States of Micronesia

Date: