

ESCROW AGREEMENT

This Escrow Agreement (“**Agreement**”), effective as of the last date set forth below (“**Effective Date**”), is made by and among: (a) [INSERT NAME OF CCA] (“**CCA**”); (b) [INSERT NAME OF BANK] (“**Bank**”); and (c) [INSERT NAME OF IOU] (“**IOU**”), each of which is a Party and all of which are Parties.

This Agreement is made with reference to the following facts:

- Recitals -

- A. On June 7, 2018, the California Public Utilities Commission (“**Commission**”) issued Decision (“**D.**”) 18-05-022 by which the Commission established reentry fees and financial security requirements (“**FSR**”) applicable to community choice aggregators (“**CCAs**”), as required by California Public Utilities Code Section 394.25(e).
- B. In D.18-05-022, the Commission determined that cash may be used by CCAs to satisfy their respective FSR obligation provided that the cash is deposited at a U.S. branch of a commercial bank acting as the escrow holder.
- C. In D.18-05-022, the Commission established that CCAs should submit a compliance advice letter with the Commission for the purpose of posting the FSR instrument.
- D. On October 9, 2020, the Commission issued Resolution E-5059 by which the Commission provided further guidance on issues related to FSR instruments.
- E. In Resolution E-5059, the Commission stated its expectation that terms and conditions in the FSR instrument should be mutually acceptable among the Parties, and no Party may unreasonably withhold its agreement to commercially reasonable terms and conditions of the FSR instrument.
- F. In response to Resolution E-5059, IOU submitted an advice letter to the Commission on November __, 2021 for the purpose of revising its tariff to reflect changes directed by the Commission in Resolution E-5059. As accepted by the Commission, IOU’s approved tariff (“**Tariff**”) shall govern matters related to the FSR Amount and other matters related to the FSR instrument and reentry fees. Notwithstanding the foregoing, in the event of a conflict between a term or condition in the Tariff and a term or condition in this Agreement, this Agreement shall control.
- G. This Agreement is intended to describe and make effective the FSR instrument used by CCA for the purpose of satisfying CCA’s FSR obligation with a cash deposit held by Bank.

- Agreement -

The Parties agree as follows:

1. **Definitions.** Capitalized terms used herein shall have the meanings ascribed to such terms herein or in the Tariff.
2. **Appointment.** CCA and IOU hereby appoint Bank as their escrow agent for the purposes set forth herein, and Bank hereby accepts such appointment under the terms and conditions set forth herein. It is understood that Bank has no responsibility with respect to the validity or perfection of the security interest described herein other than to act in accordance with the terms of this Agreement.
3. **FSR Deposit.**
 - (a) Within three (3) business days of the Effective Date, CCA agrees to deposit with Bank cash in the amount of the FSR Amount. The initial deposit and any additional deposits, and any interest earned thereon, shall collectively be referred to as the “**FSR Deposit**.” Bank shall hold the FSR Deposit in a demand deposit account (“**Escrow Account**”) for the benefit of IOU, as described further below. If at any time the FSR Deposit is less than the FSR Amount, CCA must, within three (3) business days of receiving written notice from IOU, replenish the FSR Deposit in an amount required to return the FSR Deposit to the FSR Amount.
 - (b) CCA hereby grants to IOU a present and continuing first-priority security interest in, and, lien on (and right to net against) the Escrow Account and the FSR Deposit, subject to the terms and conditions set forth herein (“**Security Interest**”).
 - (c) Bank hereby acknowledges the Security Interest granted to IOU by CCA. Bank hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Escrow Account or the FSR Deposit, except that Bank shall retain a lien on the FSR Deposit for the payment of its Annual Administrative Fees (as defined and described in Section 6 below) and for the payment of any amounts credited to the Escrow Account for which payment or reimbursement to Bank has not been made or received.
 - (d) Bank shall place the FSR Deposit in a demand deposit account offered by Bank.
 - (e) All interest earned on FSR Deposit shall be added to the FSR Deposit.
4. **Disposition.**
 - (a) Release of the FSR Deposit, or a portion thereof, as applicable, shall occur as described in this Section 4. If at any time Bank receives a written instruction executed by an IOU Authorized Representative (as defined in Section 10) requesting a release of the FSR Deposit, or a portion thereof (“**Draw Amount**”), substantially in the form of Schedule 3 attached hereto (“**Draw Notice**”), Bank shall comply with such Draw Notice without consent from CCA, but subject to the funds transfer security procedure described in Section 4(b), and shall pay the FSR Deposit or such specified amount(s) to IOU as directed in such Draw Notice within three (3) business days after Bank’s receipt of such Draw Notice. IOU agrees to provide contemporaneously a copy of the Draw Notice to CCA.
 - (b) With respect to any Draw Notice, the following security procedure will apply. A Draw Notice must be executed by an IOU Authorized Representative. Bank will confirm the

instructions by telephone call to any person listed as an IOU Authorized Person, who may be the same person who executed the Draw Notice. When calling back, Bank will confirm the instructions with respect to amount, names and numbers of accounts to be charged or credited and other relevant reference information. Bank shall not be obligated to make any payment or otherwise to act on any instruction notified to it under this Agreement if Bank is unable to validate the authenticity of the request by telephoning an IOU Authorized Person.

- (c) Bank shall have no obligation to verify IOU's compliance with Commission orders in drawing on the FSR Deposit. Notwithstanding the foregoing, in issuing the Draw Notice IOU shall be deemed to represent and warrant to Bank and CCA that IOU has not issued a Draw Notice except (i) upon written agreement between CCA and IOU or (ii) after at least 20 days following IOU's notification to CCA and the Commission, through IOU's submission of a Tier 1 advice letter consistent with Resolution E-5059 ("**Involuntary Return Advice Letter**"), that CCA has involuntarily returned its customers to IOU and amounts are therefore owed by CCA for reentry fees.
- (d) In issuing the Draw Notice, IOU shall be further deemed to represent and warrant to Bank and CCA that CCA has not, within the 20-day period after IOU has submitted the Involuntary Return Advice Letter, notified IOU in writing of (i) CCA's agreement to promptly pay amounts owed by CCA for reentry fees through direct payment by CCA to IOU or (ii) CCA's consent that IOU may withhold CCA customer payment remittances in satisfaction of the Draw Amount.
- (e) IOU agrees that the amount requested in the Draw Notice shall not include any amount that CCA disputes in writing within the 20-day period following submittal of the Involuntary Return Advice Letter, it being understood and agreed by CCA and IOU that such disputed amount shall continue to be held by Bank until the disposition of such disputed amount has been addressed through an order or ruling of the Commission in the Provider of Last Resort proceeding, or such other administrative proceeding as the Commission shall determine.
- (f) Within three (3) business days after written request from CCA, IOU shall instruct Bank to release funds from the Escrow Account to CCA if the amount of the FSR Deposit is greater than the FSR Amount, or as otherwise reasonably requested by CCA.
- (g) In no event shall Bank accept any instruction from CCA nor shall Bank permit any distribution or release of any part of the Escrow Account or FSR Deposit without instruction executed by an IOU Authorized Representative. The Parties agree that Bank shall act upon and according to the direction of IOU, and that CCA shall have no claim for any inappropriate instructions, orders or notice other than against IOU pursuant to the terms of the Tariff or otherwise under law.
- (h) CCA and IOU acknowledge that Bank is authorized to use the following funds transfer instructions ("**Wire Transfer Instructions**") to disburse the FSR Deposit, or a portion thereof, to CCA or IOU, in each case as directed by IOU pursuant to a Draw Notice:

CCA:

Bank name: _____

Bank Address: _____

ABA number: _____
Account name: _____

Account number: _____

IOU:

Bank name: _____
Bank Address: _____
ABA number: _____
Account name: _____
Account number: _____

- (i) The Parties and Bank agree that CCA and IOU may change their respective Wire Transfer Instructions set forth in Section 4(h) in accordance with Section 10. In the event any Draw Notice provides instructions different than the Wire Transfer Instructions set forth in Section 4(h), Bank shall seek confirmation of such Wire Transfer Instructions by telephone call-back to an Authorized Representative, and Bank may rely upon the confirmation of anyone purporting to be that Authorized Representative. The persons and telephone numbers designated for call-backs may be changed only in writing and executed by an Authorized Representative and delivered in accordance with Section 10.

5. Bank. Bank shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties, including but not limited to any fiduciary duty, shall be implied. Except with respect to this Agreement, Bank has no obligation to comply with the terms and conditions of any agreement between IOU and CCA, nor shall Bank be required to determine if CCA or IOU has complied with any agreement. Subject to Section 4(b), Bank may rely upon and shall not be liable for acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Party or Parties.

6. Resignation, Replacement and Succession.

- (a) Bank may resign and be discharged from its duties or obligations hereunder by giving no less than sixty (60) days' advance written notice of such resignation to CCA and IOU.
- (b) CCA may remove Bank as escrow agent by providing no less than sixty (60) days' advance written notice of such removal to Bank and IOU.
- (c) Bank's sole responsibility after the notification period expires shall be to hold the FSR Deposit (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent agreed to and appointed by CCA, at which time of delivery Bank's obligations hereunder shall cease and terminate.
- (d) Any entity into which Bank may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be responsible for duties of Bank under this Agreement without further act; provided, however, Bank shall in all such instances provide written notice to CCA and IOU.

- 7. Compensation and Payment of Costs.** CCA shall be solely responsible to pay Bank any and all fees charged by Bank (“**Administration Fee**”). Bank shall invoice CCA for each Administration Fee, and CCA shall pay such invoice within thirty (30) days of its receipt thereof.
- 8. Limitation on Liability.** Bank shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that Bank’s gross negligence or willful misconduct was the cause of any direct loss to either Party. Notwithstanding anything in this Agreement to the contrary, in no event shall Bank be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if Bank has been advised of the likelihood of such loss or damage and regardless of the form of action. Bank shall have no responsibility or liability to CCA for complying with written instructions or other written directives concerning the Escrow Account originated by IOU and delivered to Bank in accordance with this Agreement.
- 9. Indemnification.** The Parties agree jointly and severally to indemnify, defend, hold harmless, pay or reimburse Bank and its affiliates and their respective successors, assigns, directors, agents and employees (“**Indemnitees**”) from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses (including, without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, “**Losses**”), arising out of or in connection with (i) Bank’s performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction through a final order to have been caused by the gross negligence, willful misconduct, or bad faith of such Indemnitee; and (ii) Bank’s following any instructions or directions, whether joint or singular, from CCA and/or IOU received in accordance with this Agreement.
- 10. Notices.** All communications (including, without limitation, all Draw Notices or changes to the Wire Transfer Instructions) under this Agreement shall be (a) in writing executed by the appropriate Party(ies), (b) delivered on a business day as a Portable Document Format (“**PDF**”) attached to an email, and (c) delivered to the email address of the intended recipient of such communication, as set forth below. With respect to any communication (including, without limitation, any Draw Notice) under this Agreement delivered by a CCA and/or IOU to Bank, such communication shall be evidenced by the signature of a designated person as set forth in Schedule 1 for CCA and Schedule 2 for IOU (each, an “**Authorized Representative**”). No Draw Notice or other written notice to the Bank shall be deemed delivered and effective unless the Bank actually shall have received such Draw Notice or other written notice on a business day as a PDF attached to an email at the email address set forth in this Section 10, and, in the case of a Draw Notice to Bank, Bank has been able to validate the authenticity of the request pursuant to the security procedure described in Section 4(b). Bank shall not be liable to IOU, CCA or other person for refraining from acting upon a Draw Notice or any other written notice if such Draw Notice or any other written notice was delivered to any other email address, including but not limited to a valid email address of any employee of Bank. All written communications between the Parties or from the Escrow Agent to a Party shall be deemed delivered and effective on the date evidenced by the sending party’s email transmittal. The notice information for each Party is as follows:

If to CCA: [CCA's name]
[CCA's address]
(City, state [country], zip [postal code])
Attention: [title or person's name]
Tel No.: _____
Email Address: _____

If to IOU: [IOU's name]
[IOU's address]
(City, state [country], zip [postal code])
Attention: [title or person's name]
Tel No.: _____
Email Address: _____

If to Bank: [Bank's name]
[Bank's address]
(City, state [country], zip [postal code])
Attention: [title or person's name]
Tel No.: _____
Email Address: _____

11. Termination.

- (a) Upon delivery of the entire FSR Deposit by Bank to IOU pursuant to the terms of this Agreement, this Agreement shall terminate.
- (b) [Reserved.]

12. Miscellaneous.

- (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by the Parties.
- (b) Neither this Agreement nor any right or interest under this Agreement may be assigned by any Party, except with respect to Bank as provided in Section 6, without the prior written consent of the Parties, which consent shall not be unreasonably withheld.
- (c) This Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflicts of law principles. Each Party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds, and irrevocably consents to service of process by mail or in any other manner permitted by applicable law. Any and all litigation or disputes arising out of or relating to this Agreement shall be litigated in the County of [_____] in the State of California. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, such Party shall not claim, and hereby irrevocably waives, such immunity.

- (d) No Party is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.
- (e) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument or instruction, as applicable. All signatures of the parties to this Agreement may be transmitted as a PDF attached to an email, and such PDF will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.
- (f) If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- (g) CCA and IOU represent, warrant and covenant that each document, notice, instruction or request provided by such CCA or IOU to Bank shall comply with applicable laws and regulations.
- (h) Each Party represents and warrants to each other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms; (iii) there is not pending, or to its knowledge, threatened against it or any legal proceeding that could materially adversely affect its ability to perform under this Agreement; (iv) it is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of any other party to this Agreement and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and (v) it has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.
- (i) Nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Parties any legal or equitable right, remedy, interest or claim under or in respect of the FSR Deposit or this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives.

[CCA'S NAME]

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]

Date: [Date]

[IOU'S NAME]

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]

Date: [Date]

[BANK'S NAME]

By: _____
Name: [Authorized Representative's name]
Title: [Authorized Representative's title]

Date: [Date]

SCHEDULE 1 TO ESCROW AGREEMENT

[COMMUNITY CHOICE AGGREGATOR]

Telephone Numbers and Authorized Signatures for Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
[Name]	[Phone No.]	_____
[Name]	[Phone No.]	_____
[Name]	[Phone No.]	_____

For your security, please cross off any unused signature lines on this Schedule 1.

All communications (including but not limited to Wire Transfer Instructions and Draw Notices) must be delivered in accordance with Section 10 of this Agreement.

SCHEDULE 2 TO ESCROW AGREEMENT

[INVESTOR-OWNED UTILITY]

Telephone Numbers and Authorized Signatures for Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
[Name]	[Phone No.]	_____
[Name]	[Phone No.]	_____
[Name]	[Phone No.]	_____

For your security, please cross off any unused signature lines on this Schedule 2.

All communications (including but not limited to Wire Transfer Instructions and Draw Notices) must be delivered in accordance with Section 10 of this Agreement.

SCHEDULE 3 TO ESCROW AGREEMENT

DRAW NOTICE

[to be placed on IOU's Letterhead]

Date: _____

RE: ESCROW AGREEMENT, effective as of _____, 202_ (**Effective Date**), by and among [Community Choice Aggregator's name] (**CCA**), [Investor-Owned Utility] (**IOU**) and [Bank Name], in its capacity as escrow agent and bank (**Bank**) (**Agreement**).

Pursuant to Section 4 of the Agreement, IOU hereby instructs Bank to disburse the amount of [\$_____/or the total balance of the Fund (including earnings)] to [SCE][the Community Choice Aggregator], in accordance with the payment instructions provided in the Agreement. IOU hereby represents and warrants that it is not issuing this Draw Notice until the 20-day period has expired following IOU's submission of the Involuntary Return Advice Letter, as defined and described in Section 4(c) of the Agreement, and as otherwise described in Section 4(c) of the Agreement.

Sincerely,

[INVESTOR-OWNED UTILITY]

By: _____

Name: [Authorized Representative's name]

Title: [Authorized Representative's title]

Date: _____