

FORM OF ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT
(Investment in Cash Products – Article 9 of UCC)

Community Choice Aggregator Name: Pomona Choice Energy

THIS ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT (as the same may be amended or modified from time to time pursuant hereto, this “Agreement”) is entered into and effective as of date of last execution (“Effective Date”), by and among, City of Pomona, d/b/a Pomona Choice Energy, a municipal corporation, (“Community Choice Aggregator”), Southern California Edison Company, a California corporation (“SCE”, and together with Community Choice Aggregator, sometimes referred to individually as “Party” or collectively as the “Parties”), and River City Bank, in its capacities as escrow agent and, as applicable, bank (the “Escrow Agent”).

Recitals

- A. Community Choice Aggregator is required to post financial security in accordance with SCE’s Rule 23 tariff (“the Tariff”).
- B. Community Choice Aggregator has elected to post, and SCE has agreed to accept such financial security in the form of a cash deposit in an interest-bearing escrow account, all in accordance with the terms and conditions of this Agreement and the Tariff.
- C. At the request of Community Choice Aggregator, Escrow Agent has established an escrow deposit account, number [provided by the Bank], in the name of Community Choice Aggregator (the “Escrow Account”).
- D. This Agreement is being entered into to provide for the control of the Escrow Account and SCE’s security interest in the funds deposited therein under the requirements of Article 9 of the Uniform Commercial Code and 9301 et seq of the California Uniform Commercial Code.

The Parties and Escrow Agent, intending to be legally bound, agree as follows:

Agreement

- 1. **Appointment.** The Parties hereby appoint Escrow Agent as their escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein. It is understood that Escrow Agent has no responsibility with respect to the validity or perfection of the security interest other than to act in accordance with the terms of this Agreement.
- 2. **Fund.**
 - (a) Community Choice Aggregator agrees to deposit with Escrow Agent the sum of \$ 147,000.00 (One Hundred Forty-Seven Thousand Dollars) on the Effective Date. From time to time, Escrow Agent may receive additional deposits from Community Choice Aggregator in connection with the required balances needed pursuant to the Tariff. The initial deposit and any additional deposits shall collectively be referred to as the “Escrow Deposit”. Escrow Agent shall hold the Escrow Deposit in one or more demand deposit accounts and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof and any and all proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE (such proceeds, together with the Escrow Deposit, the “Fund”) in the Escrow Account as directed in Section 2(d) below. If there is an investment loss or other decrease in the Fund below the amount of the Escrow Deposit, Community Choice Aggregator must, within two business days of receiving notice from SCE, replenish the Fund in an amount required to return the Fund to the amount of the Escrow Deposit.
 - (b) Community Choice Aggregator hereby grants to SCE a present and continuing first-priority security interest in, and, lien on (and right to net against) the Escrow Account and the Fund subject to Section 9(c) below (“Security Interest”). Community Choice Aggregator acknowledges and agrees that it will not have any access to the Escrow Account or the Fund. Additionally, except for the claims and interest of SCE under this Agreement (subject to any claim in favor of Escrow Agent permitted under Section 9(c) below),

Escrow Agent has no notice of any adverse claim to or interest in the Escrow Account or the Fund, and Escrow Agent will not accept assets as to which it has notice of an adverse claim to or interest.

- (c) Escrow Agent hereby acknowledges the Security Interest granted to SCE by Community Choice Aggregator. Escrow Agent hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Escrow Account or the Fund, except that Escrow Agent shall retain a lien on the Fund for the payment of its Annual Administrative Fees (as set forth in Section 6 below) and for the payment of any amounts credited to the Escrow Account for which payment or reimbursement to Escrow Agent has not been made or received. Escrow Agent will not agree with the Community Choice Aggregator and/or any third party to comply with such Community Choice Aggregator's and/or third party's direction or order concerning the Escrow Account or the Fund without the prior written consent of SCE pursuant to Section 10.
- (d) Escrow Agent shall invest and reinvest the Fund in a [Bank Name] Money Market Deposit Account offered by Escrow Agent. Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement.
- (e) All interest earned under this Agreement shall, during the calendar year that such interest was earned, be allocated to Community Choice Aggregator and reported, by Escrow Agent to the IRS and/or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Fund by Community Choice Aggregator, whether or not said income has been distributed during such year. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate authorities. The Parties hereby represent to Escrow Agent that no other tax reporting of any kind is required given the underlying transaction giving rise to this Agreement.
- (f) Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agent's identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the Parties identity including without limitation name, address and organizational documents ("identifying information"). The Parties agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

3. Disposition and Termination.

- (a) Release of the Fund, or a portion thereof, as applicable, shall occur only under the following circumstance: if at any time Escrow Agent receives a written instruction executed by an Authorized Representative (as defined in Section 10 below) from SCE requesting a release of the Fund, or a portion thereof, substantially in the form of Schedule 3 attached hereto ("Draw Notice"), Escrow Agent shall comply with such Draw Notice without consent from Community Choice Aggregator or any other person, and shall pay the Fund or such specified amount(s) to such specified person as directed in such Draw Notice within three (3) Business Days (as defined in Section 3(e) below) after Escrow Agent's receipt of such Draw Notice.
- (b) In no event shall Escrow Agent accept any instruction from Community Choice Aggregator nor shall Escrow Agent permit any distribution or release of any part of the Escrow Account or Fund without the prior instruction executed by an Authorized Representative (as defined in Section 10 below) from SCE. The Parties agree that Escrow Agent shall act upon and according to the direction of SCE and that Community Choice Aggregator shall have no claim for any inappropriate instructions, orders or notice other than against SCE pursuant to the terms of the Tariff.
- (c) Pursuant to Section 3(a), the Parties each acknowledge that Escrow Agent is authorized to use the following funds transfer instructions ("Wire Transfer Instructions") to disburse the Fund, or a portion thereof, to Community Choice Aggregator and/or SCE, in each case as directed by SCE pursuant to a Draw Notice and the terms of Section 3(a) and Section 10, without a verifying call-back as set forth in Section 3(d) below:

Community Choice Aggregator
bank account information:

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

SCE bank account information:

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

- (d) The Parties and Escrow Agent agree that Community Choice Aggregator and SCE may change their respective Wire Transfer Instructions set forth in Section 3(c) above in accordance with Section 10 below. In the event any Draw Notice provides instructions different than the Wire Transfer Instructions set forth in Section 3(c) above, Escrow Agent is authorized to seek confirmation of such funds transfer instructions by a single telephone call-back to an Authorized Representative of SCE, and Escrow Agent 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 of SCE and delivered in accordance with Section 10 below. Except as set forth in Section 3(c) above, no funds will be disbursed until an Authorized Representative of SCE is able to confirm such updated Wire Transfer Instructions by telephone callback. Escrow Agent, any intermediary bank and the beneficiary's bank in any funds transfer may rely upon the identifying number of the beneficiary's bank or any intermediary bank included in a funds transfer instruction provided by a Party or the Parties and confirmed by an Authorized Representative. Further, the beneficiary's bank in the funds transfer instructions may make payment on the basis of the account number provided in such Party's or the Parties' instruction and confirmed by an Authorized Representative even though it identifies a person different from the named beneficiary.
- (e) As used in this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed. The Parties acknowledge that the security procedures set forth in this Section 3 are commercially reasonable. Upon delivery of the entire Fund by Escrow Agent pursuant to the terms of this Agreement, this Agreement shall terminate, subject to the provisions of Section 6 below.
4. **Escrow Agent.** Escrow Agent 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, Escrow Agent has no knowledge of, nor any obligation to comply with, the terms and conditions of any agreement between the Parties, nor shall Escrow Agent be required to determine if any Party has complied with any agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement shall control the actions of the Escrow Agent. Subject to Section 3(b), the Escrow Agent 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, and Escrow Agent shall have no duty of inquiry and no obligation to require substantiating evidence of any kind. Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. Escrow Agent shall have no duty to solicit any payments that may be due it or the Fund, including, without limitation, the Escrow Deposit nor shall Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.
5. **Resignation; Succession.** Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving sixty (60) days advance notice in writing of such resignation to the Parties. Escrow Agent's sole responsibility after such sixty (60) day notice period expires shall be to hold the Fund (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, appointed by SCE, or in accordance with the directions of a final court order, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate. If prior to the effective resignation date, SCE has failed to appoint a successor escrow agent, or to instruct Escrow Agent to deliver the Fund to another person as provided above, at any time on or after the effective resignation date, Escrow Agent either (a) may interplead the Fund with a court located in the State of California and the costs, expenses and reasonable attorney's fees which are incurred in

connection with such proceeding may be charged against and withdrawn from the Fund; or (b) appoint a successor escrow agent of its own choice. Any appointment of a successor escrow agent shall be binding upon the Parties and no appointed successor escrow agent shall be deemed to be an agent of Escrow Agent. Escrow Agent shall deliver the Fund to any appointed successor escrow agent, at which time Escrow Agent's obligations under this Agreement shall cease and terminate. Any entity into which Escrow Agent 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 Escrow Agent under this Agreement without further act.

6. **Compensation and Payment of Costs.** Community Choice Aggregator shall be solely responsible to pay Escrow Agent any and all fees charged by the Escrow Agent ("Annual Administration Fees"). **[BANK CAN INCLUDE A SCHEDULE 4 IF NEEDED]** Other than with respect to the initial Annual Administration Fee, which the Community Choice Aggregator shall pay on the Effective Date, Escrow Agent shall invoice Community Choice Aggregator for each Annual Administration Fee at least forty-five (45) days prior to each anniversary of the Effective Date, and Community Choice Aggregator shall pay such invoice within thirty (30) days of its receipt thereof. Failure by Community Choice Aggregator to make payment of any invoice by the invoice due date shall constitute a breach of this Agreement.
7. **Breach of this Agreement by Community Choice Aggregator.** In the event of any breach of this Agreement by Community Choice Aggregator of Section 6 only: (a) to the extent it has notice, thereof, Escrow Agent shall notify SCE within two (2) Business Days after such breach; and (b) Escrow Agent shall hold the Fund for the exclusive benefit of SCE, and SCE may issue a Draw Notice to Escrow Agent pursuant to Section 3(a) above.
8. **Limitation on Liability.** Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that Escrow Agent's gross negligence or willful misconduct was the cause of any direct loss to either Party. Anything in this Agreement to the contrary notwithstanding, in no event shall Escrow Agent 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 Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall have no responsibility or liability to Community Choice Aggregator for complying with written instructions or other written directives concerning the Escrow Account originated by SCE and delivered to Escrow Agent in accordance with this Agreement.
9. **Indemnification and Reimbursement.**
 - (a) The Parties agree jointly and severally to indemnify, defend, hold harmless, pay or reimburse Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "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) Escrow Agent'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 Indemnatee; and (ii) Escrow Agent's following any instructions or directions, whether joint or singular, from the Parties received in accordance with this Agreement.
 - (b) Community Choice Aggregator agrees to indemnify, defend, hold harmless, pay and/or reimburse SCE and its affiliates and their respective successors, assigns, directors, agents and/or employees (collectively, the "SCE Indemnitees") from and against any and Losses arising out of or in connection with (i) SCE's satisfaction of its obligation to any Indemnatee under Section 9(a) 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 SCE Indemnatee, and/or (ii) Escrow Agent validly exercising its rights under Section 9(c) of this Agreement.
 - (c) The Parties hereby grant Escrow Agent a lien on, right of set-off against and security interest in the Fund for the payment of any claim for indemnification, fees, expenses and amounts due to Escrow Agent or an Indemnatee. In furtherance of the foregoing, Escrow Agent is expressly authorized and directed, but shall not be obligated, to charge against and withdraw from the Fund for its own account or for the account of an Indemnatee any amounts due to Escrow Agent or to an Indemnatee under Section 6 or this Section 9.

(d) The obligations set forth in this Section 9 shall terminate in accordance with or as determined by the State of California Statute of Limitations.

10. **Notices.** All communications (including, without limitation, all Draw Notices or changes to the wire transfer instructions set forth in Section 3(c) above) under this Agreement shall be (a) in writing executed by the appropriate Party(ies), or Escrow Agent as applicable, (b) delivered on a Business Day by confirmed facsimile or as a Portable Document Format (“PDF”) attached to an email, and (c) delivered only at the fax number or email address of the intended recipient of such communication, as set forth in this Section 10. With respect to any communication (including, without limitation, any Draw Notice) permitted under this Agreement delivered by a Party or the Parties to Escrow Agent, such communication shall be evidenced by the signatures of the person(s) signing this Agreement or one of their designated persons as set forth in Schedule 1 for the Community Choice Aggregator and Schedule 2 for SCE (each an “Authorized Representative”). No Draw Notice or other written notice to the Escrow Agent shall be deemed delivered and effective unless the Escrow Agent actually shall have received such Draw Notice or other notice on a Business Day by facsimile or as a PDF attached to an email only at the fax number or email address set forth in this Section 10 and as evidenced by a confirmed transmittal to the sending Party’s transmitting fax number or email address and, in the case of a notice to Escrow Agent, Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder. Escrow Agent shall not be liable to any Party 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 fax number or email address, including but not limited to a valid email address of any employee of Escrow Agent. 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 confirmed fax or email transmittal. The notice information for each party is as follows:

If to Community
Choice Aggregator:

[Community Choice Aggregator’s name]
[Community Choice Aggregator’s address]
(City, state [country], zip [postal code])
Attention: [title or person’s name]
Tel No.: [redacted]
Email Address: [redacted]

If to SCE:

Southern California Edison Company
Attention: Manager of Risk Operations and Collateral Management
2244 Walnut Grove Avenue, GO1, Q2A
Rosemead, CA 91770
Tel No.: (626) 302-3383
Email Address: sce.credit.risk@sce.com

If to Escrow Agent:

11. **Compliance with Court Orders.** In the event that any of the Fund shall be attached, garnished, levied upon, or otherwise be subject to any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, Escrow Agent shall provide immediate notice thereof to the Parties and an opportunity for the Parties to intervene or defend against the order or decree, and is hereby expressly authorized, in its sole discretion, to obey and comply with all such orders so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that Escrow Agent obeys or complies with any such order it shall not be liable to any of the Parties hereto or to any other person by reason of such compliance notwithstanding such order be subsequently reversed, modified, annulled, set aside or vacated.

12. **Miscellaneous.**

- (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by Escrow Agent and the Parties.
- (b) Neither this Agreement nor any right or interest under this Agreement may be assigned by any party to this Agreement, except as provided in Section 5, without the prior written consent of the Escrow Agent and the other 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 and Escrow Agent 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 Los Angeles 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 to this Agreement 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 by facsimile or as a PDF attached to an email, and such facsimile or 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) The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable laws and regulations.
- (h) Each party to this Agreement 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) Except as expressly provided in Section 9 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Fund or this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[COMMUNITY CHOICE AGGREGATOR'S NAME]

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

SOUTHERN CALIFORNIA EDISON COMPANY

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

_____ As Escrow Agent

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

SCHEDULE 1 TO ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT

COMMUNITY CHOICE AGGREGATOR

Telephone Numbers and Authorized Signatures for

Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

For Community Choice Aggregator:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1.	[CCA's Authorized Representative Name]	[CCA's Authorized Rep Phone No.]	_____
2.	[CCA's Authorized Representative Name]	[CCA's Authorized Rep Phone No.]	_____
3.	[CCA's Authorized Representative Name]	[CCA's Authorized Rep 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 AND DEPOSIT ACCOUNT CONTROL AGREEMENT

SCE

Telephone Numbers and Authorized Signatures for

Person(s) Designated to Give Applicable Instructions and Confirm Funds Transfer Instructions

For SCE:

<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

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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 AND DEPOSIT ACCOUNT CONTROL AGREEMENT

DRAW NOTICE

[to be placed on SCE's Letterhead]

Date: _____

RE: ESCROW AND DEPOSIT ACCOUNT CONTROL AGREEMENT made and entered into as of _____, 201_, ("Effective Date") by and among [Community Choice Aggregator's name] ("Community Choice Aggregator"), Southern California Edison Company ("SCE") and _____ [Bank Name], in its capacities as escrow agent and, as applicable, bank (the "Escrow Agent").

Pursuant to Section 3(a) of the above-referenced Agreement, SCE hereby instructs Escrow Agent 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 Section 3 of the Agreement, and as further provided below:

Bank Name:
Bank Address:
ABA Number:
Account Name:
Account Number:

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")

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