# Attachment 1: Instructions and Requirements for MTA Scoring Committee Applicants

This document provides details regarding the requirements, restrictions and processes required to participate on the Market Transformation Administrator (“MTA”) Solicitation Scoring Committee. The document is presented in five sections, as follows:

1. Description of the MTA Solicitation Process and Role of the MTA Scoring Committee
2. Requirements and Restrictions for Participation in the MTA Solicitation Scoring Committee
3. Required Time Commitment
4. Desired Expertise of MTA Scoring Committee Members
5. Scoring Committee Application Instructions

# Description of the MTA Solicitation Process and Role of the MTA Scoring Committee

**Step #1**:  Formation of an MTA Request for Proposal (RFP) Scoring Committee for the purpose of the MTA selection process.  The following three groups of stakeholder organizations are invited to participate: Energy Efficiency Program Administrators, State Regulatory Agencies, and Public Interest Ratepayer Groups. Each of the three groups are given equal weight in the scoring process. Each participating organization shall have just one primary and one backup representative on the MTA Scoring Committee. Each of the three groups will select a lead representative that will organize member participation and manage the group’s internal voting process.

**Step #2:**  Commission staff shall lead the RFP drafting process as well as defining the RFP scoring criteria, working with the contracting agent (PG&E) on the correct format and template. At the direction of Energy Division staff, PG&E shall issue the RFP using its own solicitation portal. Once the RFP is issued, bidders will have three months to submit responses. Bids are kept confidential and communications between bidders and members of the Scoring Committee are prohibited in order to protect confidential information.

**Step #3:**  Once the RFP is issued and bids have been submitted, the bids shall be scored by the MTA Scoring Committee.  The Scoring Committee shall evaluate bids using the pre-established RFP scoring criteria and exercising professional judgment. The Scoring Committee may request interviews or presentations with finalists. Each stakeholder group is to submit one set of scores via their appointed representative.  The scores submitted by each of the three stakeholder groups shall be averaged to arrive at the overall score and corresponding Scoring Committee recommendation.

The Scoring Committee recommendation will be considered advisory by the CPUC, which will make a final decision on the winning bid at a public business meeting.

# General Requirements and Restrictions for Participation in the MTA Solicitation Scoring Committee

* Scoring Committee members must be parties to the energy efficiency proceeding (R.13-11-005 or its successor) and fall into one of the three stakeholder groups listed below:
	+ Energy Efficiency Program Administrators (Entities with an approved Business Plan under A.17-01-013)
	+ Regulatory Agencies
	+ Public Interest Ratepayer Advocacy Groups
* All Scoring Committee members must be financially disinterested in the solicitation outcome.
* All communication with bidders shall go through PG&E’s standard solicitation process. MTA Scoring Committee members must maintain strict confidentiality with all entities outside the MTA Scoring Committee. Public sector employees shall maintain confidentiality throughout the solicitation process. Private sector and non-profit members will be expected to sign a non-disclosure agreement (NDA).
* MTA Scoring Committee members must commit to allocating sufficient time to contribute in a meaningful way throughout the solicitation process. Please see the “Required Time Commitment” section below.
* Parties on the MTA Scoring Committee shall be ineligible to bid on Market Transformation Initiative work solicited by the MTA for a period of two years following contract execution with the selected MTA. For more detail regarding the kinds of work that may be solicited by the MTA, please see Attachment A to D.19-12-021.

# Required Time Commitment

Each member of the MTA Scoring Committee must be able to commit sufficient time to the solicitation process. Moreover, it is critical that the primary or backup appointee be available through the entire the solicitation process. *If both primary and backup appointees become unavailable during the course of the solicitation process, it may cause substantial delays in the solicitation process.* Interested parties should review this section carefully to ensure adequate resources are available to support the process.

* Up to bi-weekly MTA Scoring Committee meetings will be held from June through November.
* MTA Scoring Committee members are expected to make substantive contributions to documents, conduct RFP scoring, and participate in bidder interviews and interview scoring. As discussed above, a lead representative from each stakeholder group will coordinate the input of the group’s participants. The following schedule provides key milestones for the MTA solicitation. The items that are italicized are those where input from the Scoring Committee is needed:
* **December 5, 2019:** Commission Decision on Market Transformation and RENs
* **August 4, 2020:** Notice inviting stakeholders to submit applications/proposals to participate in solicitation scoring committee and RFP development process.
* ***August 18, 2020:****Applications to participate in solicitation MTA Scoring Committee due to CPUC*
* ***August 25, 2020:*** *MTA Scoring Committee membership finalized*
* ***September 2, 2020:****MTA Scoring Committee Kickoff Meeting*
* ***September 25, 2020:*** *RFP and scoring rubric finalized*
* **September 29, 2020 PG&E PRG:** Present RFP and scoring rubric to PG&E’s PRG
* **October 6, 2020** Written comments on RFP and scoring rubric due from PRG
* **October 20, 2020:** PG&E releases MTA RFP
* **October 29, 2020:** Bidders Conference
* **November 9, 2020**: Bidders submit questions to PG&E
* ***November 16, 2020****: Responses to bidder questions due to PG&E*
* **November 17, 2020:** Answers to questions posted on RFP website
* **November 23, 2020:** Bidders submit a statement of Intent to Bid
* **November 24, 2020:** Bidders submit second round of questions to PG&E
* ***December 1, 2020:*** *Responses to bidder questions due to PG&E*
* **December 2, 2020:** Answers to second round of questions posted on RFP website
* **December 3, 2020:** Interview guide and scoring rubric compiled by Commission staff distributed to MTA Scoring Committee for review
* ***December 8, 2020:*** *MTA Scoring Committee meeting to discuss interview guide and scoring rubric. Written feedback due from MTA Scoring Committee.*
* **December 17, 2020:** Final interview guide and scoring rubric distributed to MTA Scoring Committee
* **December 21, 2020:** RFP responses due to PG&E
* ***January 22, 2020****: Scores due to CPUC from MTA Scoring Committee (one set from each group)*
* **January 29, 2020** Bidders moving to interview stage announced
* ***Weeks of February 1 and 8:****Interviews with selected bidders*
* ***February 9, 2021:****Interview scores due from MTA Scoring Committee*
* **February 24, 2021:**Proposed Decision regarding contract mailed for 30-day comment
* **March/April, 2021:**Vote at Commission meeting

Note: The above is a preliminary schedule only. Steps may be added or removed as necessary.

# Scoring Committee Application Instructions

Parties interested in participating in the MTA Scoring Committee are invited to submit an application. Applicants must declare they are financially disinterested; willing to commit sufficient resources to the process; and agree to maintain strict confidentiality and sign the attached non-disclosure agreement. All applicants must adhere to the General Requirements (Attachment 1) and must sign the MTA Scoring Committee Non-Disclosure Agreement and Non-Disclosure Certificate (Attachment 4).

As stated in the General Requirements, Parties that elect to be part of the MTA Scoring Committee may not contract for work with the MTA for a period of two-years following the MTA contract execution.

The names of individuals and organizations participating in the Scoring Committee is public information.

As was also stated above, once a Party is admitted to the MTA Scoring Committee it is imperative that the primary or backup appointee maintain participation throughout the process. Any attrition in participation may cause substantial delays in the solicitation process.

***Please submit a completed application on or before August 18, 2020. Applications may be submitted via email to*** ***christina.torok@cpuc.ca.gov******.*** Applicants will be notified of their MTA Scoring Committee Membership status on or before August 25, 2020.The application form follows:

## Attachment 2: MTA Scoring Committee

## Application Form

* 1. **Party Qualifications**
1. Name of Party (organization or individual)
2. Name, title and contact information for primary participant
3. Name, title and contact information for backup participant
4. Will the primary or backup representative continuously contribute to the Scoring Committee activities throughout the MTA solicitation process? Please provide a statement of commitment to the Scoring Committee.
5. Tax category of Party (government, non-profit/NGO, private company, individual)
6. For organizations only: Please provide a brief description of the organization’s primary purpose, or mission statement
7. Does the Party have a financial interest in the outcome of the MTA Solicitation? Please elaborate.
8. Identify which of the three stakeholder groups the applying Party falls under and provide a rationale for the categorization.
9. Please list any proceedings the Party has supported over the past year in the form of providing formal comments, participating in CPUC working groups, procurement review groups, or similar. Please describe the Party’s contributions.
10. Has the Party received intervenor compensation for its contribution to CPUC proceedings over the past year? If so, please indicate the proceedings for which intervenor compensation was granted over the past year.
11. Does the party agree to abstain from engaging or bidding on any work administered by the MTA for a period of two years?

## Attachment 3: Scoring Sheet (CPUC staff to fill out.)

Name of Party/Applicant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Scorer/Rater\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The CPUC will endeavor to accept all Scoring Committee applicants that meet the General Requirements described.

| Criteria | Yes | No | Incomplete  |
| --- | --- | --- | --- |
| Party fits within one of three defined stakeholder groups |  |  |  |
| Party is financially disinterested in outcome of the MTA solicitation |  |  |  |
| Party provided a statement of resource commitment to the Scoring Committee throughout the MTA solicitation  |  |  |  |
| Party has sufficient experience contributing to CPUC proceedings / working groups / procurement review groups |  |  |  |
| Submitted a signed NDA |  |  |  |
| Agree to two-year moratorium on business engagements with contracted MTA |  |  |  |

## Attachment 4

## Market Transformation Administrator Scoring Committee

## Non-Disclosure Agreement

**Regarding Protected Materials**

**Between**

**Pacific Gas and Electric Co.**

**And**

**[MTA Scoring Committee Member]**

This Market Transformation Administrator (“MTA”) MTA Scoring Committee Non-Disclosure Agreement (the “Agreement”) dated as of the Effective Date is hereby entered into by and between Pacific Gas and Electric Company (“IOU”), and [MTA Scoring Committee Member], a [Legal Status of MTA Scoring Committee Member] (“MTA Scoring Committee Member”). IOU and MTA Scoring Committee Member shall sometimes be referred to in this Agreement individually as a “Party” and jointly as the “Parties”.

Recitals

* 1. IOU may from time to time disclose Protected Materials (as defined below) to the MTA Scoring Committee, established pursuant to the California Public Utilities Commission (“Commission”) Decision (D.) 19-12-021 (the “MTA Scoring Committee”).
	2. MTA Scoring Committee Member seeks to participate in the MTA solicitation MTA Scoring Committee. IOU desires that any Protected Material that may be provided by it or on its behalf to an Authorized Reviewer (as defined below) will be kept confidential by such Authorized Reviewer.
	3. The Parties seek to create a single universal confidentiality agreement that will: (i) be applicable to all MTA Scoring Committee correspondence, communication, and access to and use of Protected Materials; and (ii) constitute an agreement to serve on the MTA Scoring as directed in D.19-12-021.

**Agreement**

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. For the purpose of this Agreement and in addition to the terms defined and capitalized in other sections of this Agreement, the following terms shall have the following meanings:
2. “Authorized Reviewer(s)” means: (i) the MTA Scoring Committee Member if MTA Scoring Committee Member is a Non-Financially Interested Party; or (ii) a Reviewing Representative of MTA Scoring Committee Member who is a Non-Financially Interested Party, who has executed a Non-Disclosure Certificate, and who has been approved by the IOU in accordance with Section 7 of this Agreement. If MTA Scoring Committee Member has Staff that are also Unauthorized Staff, MTA Scoring Committee Member is not an Authorized Reviewer unless MTA Scoring Committee Member complies with Section 6 of this Agreement.
3. “Authorized Staff” means Staff that are not Unauthorized Staff.
4. “Commission Staff” means any person employed by or working on behalf of the Commission.
5. “Financially Interested Party” means any person or entity, or employee of an entity, that engages in the purchase, sale or be marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employee of a trade association comprised of entities that engage in the purchase, sale or marketing of energy efficiency products or services, as described in Commission Decision 05-01-055, related Commission Decisions and subsequent Commission Decisions addressing the MTA Scoring Committee or by any successor proceeding addressing the MTA Scoring Committee.
6. “Non-Disclosure Certificate” means a certificate executed by a Reviewing Representative substantially in the form of Appendix A.
7. “Non-Financially Interested Party” means an entity that is not a Financially Interested Party. The California Independent System Operator is deemed a Non-Financially Interested Party for purposes of this Agreement.
8. “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by IOU in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, including D. 17-09-023, General Order 66-D, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law or regulation; or (ii) any other materials that are designated as confidential or market sensitive information by the IOU, the Commission, any state or federal agency, or any state or federal court having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (x) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (y) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement or any other non-disclosure agreement or protective order.
9. “Redacted” or “Redact” or “Redactions” means situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.
10. “Reviewing Representative” means those persons designated in accordance with Section 7 and who meet the following criteria:
11. Reviewing Representatives may not currently be engaged in: (1) a transaction for the purchase, sale, or marketing of energy efficiency products or services (or the direct supervision of any employee(s) engagement in such a transaction); (2) the bidding on or purchasing of energy efficiency technology (or the direct supervision of any employee(s) engagement in such a transaction); or (3) knowingly providing energy efficiency consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing of energy efficiency products or services or the bidding on or purchasing of energy efficiency technology (or the direct supervision of any employee(s) engagement in such a transaction or consulting).
12. Reviewing Representatives may not be an employee, subcontractor, or independent contractor of a Financially Interested Party. If the MTA Scoring Committee Member chooses to retain outside attorneys, consultants, or experts that also have in the same law firm or consulting firm attorneys, consultants, employees, staff or experts that provide advice to, or otherwise work with or for, a Financially Interested Party, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall, consistent with the ethics wall requirements of the kind used by law firms to manage conflict-of-interest situations among different clients, from all other attorneys, consultants, employees, staff or experts that provide advice to, or otherwise work with or for, a Financially Interested Party.
13. Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
14. Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Financially Interested Parties and Non-Financially Interested Parties.
15. All Reviewing Representatives are required to execute the Non-Disclosure Certificate attached to this Agreement and are bound by the terms of this Agreement.
16. “Staff” means employees, staff, advisors, independent contractors, or subcontractors of MTA Scoring Committee Member.
17. “Unauthorized Staff” means Staff that are also consultants to or employees, staff, advisors, authorized agents, independent contractors, or subcontractors of, a Financially Interested Party.
18. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Agreement, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by an Authorized Reviewer may be requested by that Authorized Reviewer in a subsequent Commission proceeding, subject to the terms of any non-disclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Agreement.
19. Designation, Filing and Service of Protected Materials. When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “ PROTECTED MATERIALS SUBJECT TO NON-DISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Non-Disclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Section 10 hereof; (b) an assigned administrative law judge, law and motion administrative law judge, assigned Commission commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment; (ii) denies a motion to file the document under seal; or (iii) the document or information becomes public knowledge, other than through disclosure in violation of this Agreement or any other non-disclosure agreement or protective order. However, the IOU has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Agreement. Such documents shall only be served upon Authorized Reviewers and Commission Staff. Service upon Authorized Reviewers and Commission Staff may either be: (x) by electronic mail in accordance with the procedures adopted in this proceeding; (y) by facsimile; or (z) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the assigned administrative law judge shall be served with such document by the same means and at the same time.

1. Redaction of Documents. Whenever an Authorized Reviewer files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Authorized Reviewer shall also prepare a Redacted version of such document. The Redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been Redacted and where the Redactions occurred. The Redacted version of a document to be filed shall be served on all persons on the service list, and the Redacted version of a discovery document shall be served on all persons entitled thereto.
2. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer: (a) shall treat Protected Materials as confidential in accordance with this Agreement and the Non-Disclosure Certificate; (b) shall use Protected Materials solely for the purpose of performing its obligations under this Agreement and for participating in the MTA Scoring Committee and not for any other purpose; and (c) shall not disclose Protected Materials in any manner to any person except to Commission Staff and to an Authorized Reviewer who needs to know such information for the purposes of performing the receiving party’s obligations under this Agreement. Each Authorized Reviewer agrees to implement and maintain reasonable security procedures and practices appropriate to the nature of the Protected Materials, including, but not limited to, complying with industry standard security requirements, to protect the Protected Materials from unauthorized access, destruction, use, modification, or disclosure, and to prohibit the use of the Protected Materials for a secondary commercial purpose. Each Authorized Reviewer shall promptly notify IOU of any unauthorized disclosure or use of the Protected Materials.

Authorized Reviewers shall be liable for any unauthorized disclosure or use by itself and/or its employees, paralegal, or administrative staff. In the event an Authorized Reviewer is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Authorized Reviewer shall immediately inform IOU of the request, and IOU may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Authorized Reviewer shall cooperate in good faith with IOU either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

1. Additional MTA Scoring Committee Member Requirements. If MTA Scoring Committee Member has Staff that are also Unauthorized Staff, then MTA Scoring Committee Member is not an Authorized Reviewer unless: (a) MTA Scoring Committee Member provides written notice to IOU identifying such Unauthorized Staff; (b) MTA Scoring Committee Member establishes policies and procedures necessary to create an ethics wall separating Authorized Staff from Unauthorized Staff consistent with the ethics wall requirements of the kind used by law firms to manage conflict-of-interest situations among different clients; (c) MTA Scoring Committee Member provides documentation to IOU evidencing, to IOU’s reasonable satisfaction, MTA Scoring Committee Member’s implementation and establishment of such policies and procedures required to comply with Section 6(b) above; and (d) Protected Material is only disclosed to Authorized Staff on a need-to-know basis and only for the purpose of participating in the EE PRG.
2. Designation and Approval of Reviewing Representatives. MTA Scoring Committee Member shall provide written notice identifying its proposed Reviewing Representative(s) to the IOU. The written notice shall include the information identified in this Section. Within fifteen (15) business days after receiving written notice of the identity of any proposed Reviewing Representative, the IOU may provide the MTA Scoring Committee Member with a written request for additional information, a written objection to a specific proposed Reviewing Representative stating the grounds for the objection, or a written approval of a specific proposed Reviewing Representative; provided, if IOU provides the MTA Scoring Committee Member with a written request for additional information, then IOU will be afforded a reasonable amount of additional time to provide a written objection to or a written approval of such proposed Reviewing Representative.

MTA Scoring Committee Member may not provide any Protected Materials to proposed Reviewing Representative(s) until the IOU provides written approval of the Reviewing Representative and only if such Reviewing Representative is an Authorized Reviewer.

Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in this Agreement. Failure by the IOU to object within fifteen (15) business days, or a previously issued written approval provided by the IOU does not waive the IOU’s right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures set forth herein.

Reviewing Representative(s) have a duty to disclose to the IOU any potential conflict that puts the Reviewing Representative in violation of D.05-01-055, related Commission Decisions and subsequent Commission Decisions addressing MTA Scoring Committee or by any successor proceeding addressing the EE PRG. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

1. Non-Disclosure Certificates. A Reviewing Representative shall not inspect, receive, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until the Reviewing Representative is an Authorized Reviewer, which includes a requirement that such Reviewing Representative must first complete and execute a Non-Disclosure Certificate, attached hereto as Appendix A, and deliver the signed Non-Disclosure Certificate to the IOU.
2. Ownership and Return or Destruction of, and Termination of Access to, Protected Materials. All Protected Materials shall be and remain the property of the IOU. Nothing in this Agreement shall be construed as granting any rights in or to Protected Materials to the Authorized Reviewer receiving it, except the right of use in accordance with the terms of this Agreement.

If the IOU requests in writing that an Authorized Reviewer returns or destroys Protected Materials, the Authorized Reviewer shall, within fifteen (15) days after such request: (a) return Protected Materials to the IOU or destroy the Protected Materials; and (b) submit to the IOU an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or destroyed. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Agreement.

In the event that: (a) a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in providing services to the MTA Scoring Committee Member; (b) a Reviewing Representative becomes a Financially Interested Party; (c) an MTA Scoring Committee Member becomes a Financially Interested Party; or (d) an MTA Scoring Committee Member or Reviewing Representative is no longer an Authorized Reviewer, then access to Protected Materials by that person or entity shall be terminated and the MTA Scoring Committee Member or Reviewing Representative, as applicable, shall immediately return or destroy all Protected Materials to the IOU with written notice explaining the reason for the return or destruction of such Protected Materials. Even if MTA Scoring Committee Member or a Reviewing Representative is no longer an Authorized Reviewer or even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate.

1. Withdrawal of Designation. The IOU may determine at any time to remove the “Protected Materials” designation from any materials if, in its opinion, confidentiality protection is no longer required. In such a case, the IOU will notify all MTA Scoring Committee Members that the IOU has withdrawn its designation of Protected Materials for specific documents or material.
2. Other Objections to Use or Disclosure. Nothing in this Agreement shall be construed as limiting the right of a Party to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.

12. Notice. Any notice or communication given pursuant to this Agreement shall be in writing and:

(a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;

(b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or

(c) Delivery by facsimile, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to IOU: [UTILITY]

 [ADDRESS]

Attn: [NAME]

Cc: [NAMES]

If to MTA Scoring Committee Member*:*

 [Name of MTA Scoring Committee Member]

 [Address of MTA Scoring Committee Member]

 Telephone: [Number]

 Facsimile: [Number]

1. Dispute Resolution.

All disputes that arise under this Agreement, including but not limited to alleged violations of this Agreement and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the Parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either Party may present the dispute for resolution to the Commission and may pursue all other remedies available in law or equity.

1. Remedies. The Parties agree that any violation of this Agreement shall constitute a violation of an order of the Commission and that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Notwithstanding the foregoing, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity in the event of an actual or anticipated disclosure of Protected Materials.
2. Choice of Law. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
3. Modification. This Agreement may not be modified or terminated except by a written agreement executed by both Parties or by order of the Commission. The Parties agree that modifications to this Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each Party governed by this Agreement has the right to seek modifications in it as appropriate from the Commission.
4. Waiver. Any waiver of the requirements and provisions of this Agreement shall be in writing. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
5. Interpretation. Headings are for convenience only and may not be used to restrict the scope of this Agreement. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
6. Enforceability. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
7. Effective Date. This Agreement shall be deemed effective as of the date upon which the last Party executes this Agreement (the “Effective Date”).
8. Authority. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
9. Counterparts, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

|  |  |
| --- | --- |
| **[MTA Scoring Committee MEMBER],**a [Legal Status]By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **[Pacific Gas and Electric],**a California corporationBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX A TO AGREEMENT**

**NON-DISCLOSURE CERTIFICATE**

 I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of that certain Energy Efficiency Procurement Review Group Non-Disclosure Agreement Regarding Protected Materials between *[MTA Scoring Committee Member]* and [Pacific Gas and Electric Company]effective as of May [ ], 2020(the “Agreement”), that I have been given a copy of and have read the Agreement, that I am not a Financially Interested Party, and that I agree to be bound by the Agreement as if I am a Party to the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**