

**ENERGY EFFICIENCY PROCUREMENT REVIEW GROUP
NONDISCLOSURE AGREEMENT
REGARDING MARKET PROTECTED MATERIALS**

1. Scope.

A. This Energy Efficiency Procurement Review Group Nondisclosure Agreement (“Nondisclosure Agreement”) shall govern access to and the use of Protected Materials, provided by, or on behalf of, <Utility Name> (“IOU”) to IOU’s Energy Efficiency Procurement Review Group (“EE PRG”).

2. Definitions

In addition to the terms defined and capitalized in other sections of this Nondisclosure Agreement, the following terms are defined for the purposes of this Nondisclosure Agreement:

A. For purposes of this Nondisclosure Agreement, the term “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 and/or market sensitive information by the IOU, the California Public Utilities Commission (“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: (i) any information or document contained in the public files of the

Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

4. Access to Protected Materials and Use of Protected Materials.

Subject to the terms of this Nondisclosure Agreement, the EE PRG Member shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. The EE PRG Member may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by the EE PRG Member may be requested by that EE PRG Member in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Nondisclosure Agreement.

3. 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 NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Nondisclosure 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 Paragraph 10 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective

order. However, the Disclosing Party 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 Nondisclosure Agreement. Such documents shall only be served upon EE PRG members and persons employed by or working on behalf of the Commission. Service upon EE PRG members and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. Redaction of Documents.

Whenever an EE PRG member 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 EE PRG member 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.

5. Maintaining Confidentiality of Protected Materials.

The EE PRG Member shall treat Protected Materials as confidential in accordance with this Nondisclosure Agreement and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in the EE PRG, and shall not be disclosed in any manner to any person except: (i) a Reviewing Representative of the EE PRG Member; and (ii) persons employed by or working on behalf of the Commission. The EE PRG Member 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. The EE PRG Member shall promptly notify IOU of any unauthorized disclosure or use of the Protected Materials.

The EE PRG Member shall be liable for any unauthorized disclosure or use by itself and/or its employees, paralegal, or administrative staff. In the event the EE PRG Member 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 EE PRG Member 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 EE PRG Member 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 the EE PRG Member has been ordered to produce certain specific Protected Materials, the EE PRG Member 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.

6. Return or Destruction of Protected Materials.

If requested to do so in writing, the EE PRG Member shall, within fifteen (15) days after such request, return Protected Materials to IOU, or shall destroy the materials, except that notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 5. If requested to do so, the EE PRG Member shall also submit to IOU an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or have been destroyed, or will be maintained in accordance with Paragraph 5. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Nondisclosure Agreement.

7. Dispute Resolution.

All disputes that arise under this Nondisclosure Agreement, including but not limited to alleged violations of this Nondisclosure 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.

8. Other Objections to Use or Disclosure.

Nothing in this Nondisclosure 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.

9. Remedies.

Any violation of this Nondisclosure Agreement shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the Parties reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

10. Withdrawal of Designation.

IOU may agree 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, IOU will notify all EE PRG Members that IOU has agreed to withdraw its designation of Protected Materials for specific documents or material.

11. Modification.

This Nondisclosure Agreement shall remain in effect unless and until it is modified or terminated by written agreement of the Parties or by order of the Commission. The Parties agree that modifications to this Nondisclosure 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 Nondisclosure Agreement has the right to seek modifications in it as appropriate from the Commission.

12. Interpretation.

Headings are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

EE PRG MEMBER

By: _____

Title: _____

Representing: _____

Date: _____

IOU

By: _____

Title: _____

Representing: _____

Date: _____

APPENDIX A TO NONDISCLOSURE AGREEMENT

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between **EE PRG Member Name** and **IOU Name**, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. 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 that Nondisclosure 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: _____