

**THIS CONFIDENTIALITY AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**[Insert Name],**  
(called the “**Owner**”)

of the first part,

- and -

**[Insert Name],**  
(called the “**Confidant**”)

of the second part

**WHEREAS** on **[insert date]**, in **Order xxx/xx** (the “**Order**”), the Public Utilities Board of Manitoba (the “**Board**”) ordered, within the course of considering MPI’s **[Insert GRA Years]** General Rate Application (“**20\_\_ GRA**”), that certain documents be received in confidence, on a provisional basis, subject to the final determination of their confidential status pursuant to Rule 13 of the Board’s Rules of Practice and Procedure (the “**Confidential Documents**”).

**AND WHEREAS** information contained in the Confidential Documents pertaining to the Owner is the property of the Owner, its contractual counterparties and domestic customers and is or may be confidential and commercially sensitive.

**AND WHEREAS** the Order directs MPI to provide a non-redacted copy of the Confidential Documents to the Confidant, following their execution of a prescribed undertaking and **any other document it deems necessary** (the “**Agreement**”).

**NOW THEREFORE IN CONSIDERATION OF** receiving access to the Confidential Documents, the sum of one (\$1.00) dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## ARTICLE 1 DEFINITIONS

In this Agreement:

**“Authorized Person”** means any person permitted by the Order to receive the Confidential Information, who is in compliance with the conditions on the receipt and use of the Confidential Information, as set out in the Order.

**“Confidential Information”** means any information contained in the Confidential Documents (and includes the Confidential Documents themselves) and any information that has been filed by MPI with the Board in confidence pursuant to the Order.

**“Permitted Uses”** has the meaning set forth in Article 2 below.

**“Person”** shall be broadly interpreted to include, without limitation, any corporation, partnership, other entity, or individual.

**“Proceeding”** means the proceeding before the Board in respect of the        GRA.

**“Reverse Engineer”** means to discover, synthesize or otherwise recreate the Confidential Information following a detailed examination.

**“Unauthorized Person”** means any Person other than MPI, the Confidant or an Authorized Person.

## ARTICLE 2 PERMITTED USES

The Confidant may use Confidential Information for the following purposes (called **“Permitted Uses”**):

- (a) to give instructions to, carry out critical analysis, form conclusions and/or advise an Authorized Person; and
- (b) to prepare a report suitable for filing on the public record of the Proceeding and testify on the public record of the Proceeding. Without the consent of the Board obtained in advance, the Confidant shall not include in the report or testimony any Confidential Information or any information that would enable an Unauthorized Person to Reverse-Engineer Confidential Information. To the extent that the Confidant relies upon Confidential Information to arrive at a conclusion, the Confidant may include in the Report or testimony information at a level of summary and aggregation which will not disclose Confidential Information or enable an Unauthorized Person to reverse-engineer the Confidential Information, subject always to the Confidant providing a redacted Report on the public record and a complete report in confidence to the Board and/or testifying *in camera* where Confidential Information is discussed.

### **ARTICLE 3 CONFIDENTIALITY**

Except as specifically provided in Article 2 above (Permitted Uses), the Confidant shall:

- (a) keep the Confidential Information in the strictest confidence;
- (b) not disclose Confidential Information to any Unauthorized Person without the prior written consent of the Owner;
- (c) in the case of a disclosure to an Unauthorized Person with the prior written consent of the Owner, obtain from the Unauthorized Person an undertaking or confidentiality agreement satisfactory in form to the Board and the Owner, on terms no less restrictive than those in this Agreement;
- (d) take prudent, reasonable steps to protect Confidential Information in its possession from inadvertent disclosure to an Unauthorized Person; and
- (e) destroy or return the Confidential Information (if so permitted) when required and in the manner required by the Board.

If the Confidant so chooses, they may solicit the Owner's comments on particular documents that are in the process of being prepared in the interests of avoiding inadvertent disclosures to an Unauthorized Person.

### **ARTICLE 4 COMPELLED DISCLOSURE**

In the event that the Confidant, or an Unauthorized Person referred to in Article 3(c) above, receives notice indicating that they may or shall be legally compelled to disclose any of the Confidential Information, the Confidant shall provide the Owner with prompt notice so that the Owner may, at its sole discretion, seek a protective order or other appropriate remedy.

The Confidant, and any such Unauthorized Person referred to in Article 3(c) above, shall cooperate fully with the Owner protecting the confidential and proprietary nature of the Confidential Information sought to be compelled to be disclosed, including providing assistance to the Owner in the prosecution and defence of any action(s) or proceeding(s) brought or made in respect of such matters.

In the event that such protective order or other remedy is not obtained, or that the Owner waives compliance with the provisions of this Agreement, the Confidant or Unauthorized Person referred to in Article 3(c) above shall furnish only that portion of the Confidential Information in respect of which it shall be legally required to disclose.

## ARTICLE 5 FURTHER COVENANTS

The Confidant shall:

- (a) use the Confidential Information only for the Permitted Uses and for no other purpose whatsoever; and
- (b) not use or reverse engineer Confidential Information for personal gain in any fashion, other than for the receipt of compensation for his or her participation in this proceeding.

And the Confidant agrees to release, indemnify and hold harmless the Owner and its respective personnel against all actions, claims, suits, demands, claims for costs or expenses or any other proceeding arising out of or in connection with the Confidant's breach of any of the Confidant's obligations hereunder, including, for greater certainty, the use or disclosure by the Confidant of the Confidential Information other than as permitted herein.

## ARTICLE 6 NO LICENCE OR WARRANTY

The Confidant agrees that the Confidential Information pertaining to the Owner is the property of the Owner, its contractual counterparties and domestic customers, and the Confidant shall not contest or challenge any of their rights in or to any Confidential Information. The Confidant does not receive any right, title or interest of any nature whatsoever in or to any Confidential Information.

In addition, the Confidant acknowledges and agrees that the Confidential Information (including the Confidential Documents) were prepared for the benefit of MPI and were prepared to reflect MPI's instructions. Accordingly, the Owner may not have addressed matters, which may be of interest or relevance to the Confidant. The Owner does not warrant or represent that the Confidential Information (including the Confidential Documents) are sufficient or appropriate for the Confidant's purposes. The Owner is not responsible to the Confidant, or any other party, if the Confidant or any other party relies on the Confidential Information.

## ARTICLE 7 CONTINUING OBLIGATION

This Agreement is effective upon execution by both parties, and the obligations of the Confidant under this Agreement shall not terminate but shall continue without limitation of time.

## ARTICLE 8 EQUITABLE REMEDIES

In the event of a breach, or threatened breach, of this Agreement by the Confidant, the parties agree that the harm suffered by the Owner may not be compensable by monetary damages alone and, accordingly, that the Owner shall, in addition to any other available legal or equitable remedies, be entitled to seek an injunction against such breach or threatened breach.

## ARTICLE 9 NOTICES

Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be delivered to:

a) **Owner:**

[Insert Address]  
 [Insert Address]  
 [City] [Province] [Postal Code]  
 Attn: [Insert Name]

b) **Confidant:**

[Insert Address]  
 [Insert Address]  
 [City] [Province] [Postal Code]  
 Attn: [Insert Name]

or such other addresses as either party may notify the other of in writing. Notices may be given by personal service or fax transmission. Any notice given by personal service shall be deemed to have been effectually given and received at the date and time of actual delivery. Any notice sent by fax transmission shall be deemed to have been effectually given and received on the next business day following transmission.

## ARTICLE 10 INTERPRETATION AND ENFORCEMENT

This Agreement shall be subject to, interpreted, performed and enforced in accordance with the laws of Manitoba and the applicable laws of Canada without regard to Manitoba or federal Canadian law governing conflicts of law, even if one or more of the parties to this Agreement is resident of or domiciled in any other province, state, or country. The parties hereby irrevocably attorn to the exclusive jurisdiction of the Court of Queen's Bench of Manitoba, Winnipeg Centre. The recitals hereof form an integral part of this Agreement. Section headings in this Agreement are for the convenience of the parties only, and shall not affect the interpretation of this Agreement.

## ARTICLE 11 SEVERABILITY

If any provision in this Agreement is illegal, invalid or unenforceable at law, it shall be deemed to be severed from this Agreement and the remaining provisions shall continue in full force and effect. The parties agree that they shall endeavor to replace any such severed provision with a new provision which achieves substantially the same practical effect and which is valid and enforceable.

### **ARTICLE 12 WAIVER**

No failure or delay by the Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any provision of this Agreement, or a breach thereof, shall be effective unless it is in writing and signed by the party waiving the provision or the breach thereof.

### **ARTICLE 13 ASSIGNMENT**

The Confidant shall not assign this Agreement without the prior written consent of the Owner. No assignment of this Agreement shall operate to relieve the Confidant from any obligation of this Agreement.

### **ARTICLE 14 FURTHER ACTS AND ASSURANCES**

Each of the parties shall, from time to time, do all acts and things and execute from time to time all such further documents and assurances as may be necessary to carry out and give effect to the terms and conditions of this Agreement.

### **ARTICLE 15 FAX EXECUTION**

This Agreement may be executed in any number of counterparts, including counterparts signed by fax, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. A photocopied and/or fax copy of this Agreement bearing the signature of each party, in a single document or counterparts thereof as provided herein, shall be deemed an original execution version of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement on the date first above written.

**[Remainder of Page Intentionally Left Blank]**

**[Insert Owner's Name]**

Per: \_\_\_\_\_

Name:

Title:

**CONFIDANT**

\_\_\_\_\_  
**WITNESS [PRINTED NAME]**

\_\_\_\_\_  
**WITNESS [SIGNATURE]**

\_\_\_\_\_  
**[CONFIDANT SIGNATURE]**