

Order No. 154/19

**MOTION BY MANITOBA PUBLIC INSURANCE
SEEKING CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION AND
DOCUMENTS IN THE 2020/2021 GENERAL RATE APPLICATION**

October 15, 2019

**BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Chair
Carol Hainsworth, Member**

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1. SUMMARY

By this Order, the Public Utilities Board (Board) grants, in part, the motion of Manitoba Public Insurance (MPI or the Corporation), seeking confidential receipt by the Board of certain documents and responses to Information Requests (IRs) filed by MPI in the 2020/2021 General Rate Application (GRA or the Application). The Board also approves the form of confidentiality agreement to be signed by Interveners and professional advisors to the Board in favour of Forrester Research Limited.

The Board dismisses as premature the Corporation's request to deny access by the Insurance Brokers Association of Manitoba (IBAM) to a portion of one document claimed as confidential by MPI. No representative of IBAM has requested access to any confidential materials, or executed any undertakings of confidentiality or confidentiality agreements. If IBAM seeks access to that confidential material, MPI is at liberty to renew its request to deny such access.

1.0 Overview

MPI filed the GRA on June 21, 2019. By letter dated June 25, 2019, the Board approved and outlined the process for the treatment of confidential or commercially sensitive information (CSI) in this GRA. In order to increase the efficiency of the hearings, MPI was not required to bring a separate motion under Rule 13 of the Board's Rules of Practice and Procedure for confidential status of material, each time it filed material claimed as such with the Board. Instead, MPI publicly filed redacted material claimed as confidential with the Board. MPI also provided non-redacted copies of material claimed as confidential to the Board, and to Board Advisors and Interveners who executed undertakings of confidentiality and confidentiality agreements, in forms previously approved by the Board.

The Board directed that, once all material claimed as confidential was filed by MPI, it was to file a motion pursuant to Rule 13 of the Board's Rules of Practice and Procedure, seeking confidential status of the material.

The First Round IR responses were filed by MPI on August 12, 2019. The Second Round IR responses were filed by MPI on September 13, 2019. The within motion was filed on September 24, 2019.

MPI's motion requests confidential treatment for the following:

General Rate Application

Part IV(ii) - VM Appendix 1

Part IV(ii) - VM Appendix 2

Part IV(ii) - VM Appendix 3

Part IV(ii) - VM Appendix 6

Part IV(ii) - VM Appendix 6a

Part IV(ii) - VM Appendix 7

Part IV(ii) - VM Appendix 7 Attachment A

Part IV(ii) - VM Appendix 7 Attachment B

Part IV(ii) - VM Appendix 7a

Part IV(ii) - VM Appendix 7b

Part IV(ii) - VM Appendix 7c

Part IV(ii) - VM Appendix 9

Part IV(ii) - VM Appendix 10 Attachment A

Part IV(ii) - VM Appendix 10 Attachment B

Part IV(ii) - VM Appendix 11

Part IV(ii) - VM Appendix 11a

Part IV(ii) - VM Appendix 11b

Part IV(ii) - VM Appendix 12a

Part IV(ii) - VM Appendix 12b

Part IV(ii) - VM Appendix 13

Part IV(ii) - VM Appendix 13a

Part IV - VM Attachment A

Part IV(ii) - IT Appendix 4

Part VI - INV Figure INV 43

Part VI - RMF RFM.2

Part VI - RMF Appendix 1

Responses to Round One Information Requests

PUB (MPI) 1-31 Attachment B

PUB (MPI) 1-40(c) Attachment A

PUB (MPI) 1-49 Attachment A

PUB (MPI) 1-84 Appendix 1

PUB (MPI) 1-89 Appendix 1

PUB (MPI) 1-86 Appendix 1

PUB (MPI) 1-86 Appendix 2

CAC (MPI) 1-1 Attachment C

CAC (MPI) 1-1 Appendix 18

CAC (MPI) 1-1 Appendix 19

CAC (MPI) 1-1 Appendix 20

CAC (MPI) 1-1 Appendix 21

CAC (MPI) 1-4(b)

CAC (MPI) 1-31 Appendix 1

CAC (MPI) 1-31 Appendix 2

CAC (MPI) 1-31 Appendix 3

CAC (MPI) 1-31 Appendix 4

CAC (MPI) 1-31 Appendix 5

CAC (MPI) 1-31 Appendix 6

CAC (MPI) 1-31 Appendix 7

CAC (MPI) 1-31 Appendix 8

CAC (MPI) 1-31 Appendix 9

CAC (MPI) 1-31 Appendix 10

CAC (MPI) 1-31 Appendix 11

PUB (MPI) CSI 1-1 to 1-32

CAC (MPI) CSI 1-1 to 1-17

Responses to Round Two Information Requests

PUB (MPI) 2-32 Appendix 1

CAC (MPI) 2-26 Appendix 1

IBAM (MPI) 2-12

IBAM (MPI) 2-24 Appendix 1

PUB (MPI) CSI 2-1 to 2-3

CAC (MPI) CSI 2-1 to 2-5

(collectively, the "Documents").

In addition, MPI requested approval of an amendment to the previously Board-approved form of confidentiality agreement in favour of Forrester Research Limited, and an order denying IBAM access to a particular document set out in the list above.

On October 1, 2019, the Board received a written response to the motion from CAC, in which CAC advised that it did not contest the motion, however, it did reserve the right to challenge the process and types of information considered confidential in future applications.

On October 11, 2019, MPI advised that it was withdrawing the claim for confidentiality over CAC (MPI) 1-1 Attachment C.

The Board did not require an oral hearing on the Motion.

2. PARTIES' POSITIONS AND BOARD FINDINGS

2.0 MPI

The grounds for the MPI's motion were, among other things:

- That MPI is contractually required to treat some of the information in the Documents as confidential, and is prohibited by their respective owners from making it available to the public;
- That the disclosure of the Documents could reasonably be expected to result in undue financial loss or gain to, or significantly harm, the competitive position of a person directly or indirectly affected by the proceeding; and
- That the Documents are personal, financial, commercial, scientific or technical in nature, have been consistently treated as confidential by persons directly affected by the proceeding, and the interest in maintaining confidentiality over the Documents outweighs the public interest in their disclosure.

The motion was supported by the affidavit of Jeffery Crozier, Director, Regulatory Affairs, for MPI (Crozier Affidavit), which was filed on a confidential basis. The Crozier Affidavit supported MPI's claim for confidentiality for each of the documents listed in the motion.

The Crozier Affidavit also set out the amended form of confidentiality agreement requested by Forrester Research Limited and the rationale for denying IBAM access to one of the Documents.

2.1 CAC Response

As indicated above, CAC did not contest the motion, but made the following submissions with respect to two of the confidential documents:

- PUB (MPI) 1-85 Appendix 1: CAC noted the use by MPI of three representative close-out reports, which were redacted for the public record. CAC did not contest the process of using representative reports for purposes of this Application; however, CAC advised that it might not endorse that process going forward, stating that it is in the public interest for the most information possible to be filed on the public record.
- Part VI – Risk Management Framework – Appendix 1: CAC did not oppose the confidential status of this information, but indicated it was without prejudice to CAC's position in future proceedings with respect to the confidential treatment of this type of information.

2.2 Board Findings

Proceedings before the Board are public, and documents filed with the Board by a party to a proceeding are placed on the public record. However, the Board may receive information in confidence on any terms it considers appropriate in the public interest, when the test under Rule 13(2) is met:

- (a) If the Board is of the opinion that disclosure of the information could reasonably be expected
- i. to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or
 - ii. to harm significantly that person's competitive position

or

- (b) If
- i. the information is personal, financial, commercial, scientific or technical in nature; or
 - ii. the information has been consistently treated as confidential by a person directly affected by the proceeding; and
 - iii. the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

On hearing a motion under Rule 13, the Board may order the information in question be placed on the public record, order the document not be placed on the public record with such conditions on access imposed as the Board considers appropriate, order an abridged version of the document be placed on the public record, or make any other order the Board finds to be in the public interest. Rule 13(5) allows the filing party to request that the document be withdrawn prior to being placed on the public record where the Board has determined to place any part of the document on the public record.

The Board has reviewed and considered all of the information filed by MPI, as well as the submissions of CAC. The Board has taken into account the evidence filed confidentially by MPI in support of its motion, and is satisfied that the Documents should be received in confidence, as they meet the test under Rule 13(2). The restrictions requested on the

distribution of the Documents are necessary in order to protect third party proprietary information, confidential, proprietary or commercially sensitive information.

Accordingly, the Board grants MPI's motion with respect to the confidential status of the Documents.

The Board notes CAC's comment, that CAC has not opposed MPI's motion without prejudice to its ability to take a different position on this type of material in future proceedings. The Board assesses claims for confidential status on a case-by-case basis. Any future claims for confidential status will be determined by the Board on their own merits, after hearing from interested parties.

With respect to the amended form of confidentiality agreement, the amendment is not substantial and therefore the Board approves the modified form.

Finally, as indicated above, MPI's request to deny IBAM any access to one of confidential documents premature as no representative of IBAM has requested access to any confidential materials. Should access to the document in question be requested by IBAM in the future, MPI shall be at liberty to renew its request for complete confidentiality.

3.0 IT IS THEREFORE ORDERED THAT:

3.1 The Board grants MPI's motion and hereby grants leave to MPI to file the following documents ("the Documents") in confidence with the Board;

General Rate Application

Part IV(ii) - VM Appendix 1

Part IV(ii) - VM Appendix 2

Part IV(ii) - VM Appendix 3

Part IV(ii) - VM Appendix 6

Part IV(ii) - VM Appendix 6a

Part IV(ii) - VM Appendix 7

Part IV(ii) - VM Appendix 7 Attachment A

Part IV(ii) - VM Appendix 7 Attachment B

Part IV(ii) - VM Appendix 7a

Part IV(ii) - VM Appendix 7b

Part IV(ii) - VM Appendix 7c

Part IV(ii) - VM Appendix 9

Part IV(ii) - VM Appendix 10 Attachment A

Part IV(ii) - VM Appendix 10 Attachment B

Part IV(ii) - VM Appendix 11

Part IV(ii) - VM Appendix 11a

Part IV(ii) - VM Appendix 11b

Part IV(ii) - VM Appendix 12a

Part IV(ii) - VM Appendix 12b

Part IV(ii) - VM Appendix 13

Part IV(ii) - VM Appendix 13a

Part IV - VM Attachment A

Part IV(ii) - IT Appendix 4

Part VI - INV Figure INV 43

Part VI - RMF RFM.2

Part VI - RMF Appendix 1

Responses to Round One Information Requests

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PUB (MPI) 1-40(c) Attachment A

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PUB (MPI) 1-84 Appendix 1

PUB (MPI) 1-89 Appendix 1

PUB (MPI) 1-86 Appendix 1

PUB (MPI) 1-86 Appendix 2

CAC (MPI) 1-1 Appendix 18

CAC (MPI) 1-1 Appendix 19

CAC (MPI) 1-1 Appendix 20

CAC (MPI) 1-1 Appendix 21

CAC (MPI) 1-4(b)

CAC (MPI) 1-31 Appendix 1

CAC (MPI) 1-31 Appendix 2

CAC (MPI) 1-31 Appendix 3

CAC (MPI) 1-31 Appendix 4

CAC (MPI) 1-31 Appendix 5

CAC (MPI) 1-31 Appendix 6

CAC (MPI) 1-31 Appendix 7

CAC (MPI) 1-31 Appendix 8

CAC (MPI) 1-31 Appendix 9

CAC (MPI) 1-31 Appendix 10

CAC (MPI) 1-31 Appendix 11

PUB (MPI) CSI 1-1 to 1-32

CAC (MPI) CSI 1-1 to 1-17

Responses to Round Two Information Requests

PUB (MPI) 2-32 Appendix 1

CAC (MPI) 2-26 Appendix 1

IBAM (MPI) 2-12

IBAM (MPI) 2-24 Appendix 1

PUB (MPI) CSI 2-1 to 2-3

CAC (MPI) CSI 2-1 to 2-5

3.2 The process for the treatment of the Documents shall continue to be as set out in the letter from the Board to MPI and Interveners dated June 25, 2019, and attached hereto as **Appendix A**.

3.3 The form of confidentiality agreement to be signed by Interveners and Board Advisors in respect of material from Forrester Research Limited shall be as set out in **Exhibit "I"** to the Affidavit of Jeffery Crozier, sworn September 25, 2019.

3.4 The Board dismisses as premature MPI's motion to deny any access by the Insurance Brokers Association of Manitoba to a portion of one of the documents set out in 3.1.

Board decisions may be appealed in accordance with the provisions of Section 58 of The Public Utilities Board Act, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

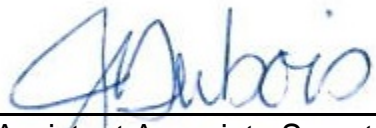
"Irene A. Hamilton, Q.C."

Panel Chair

"Jennifer Dubois, CPA, CMA"

Assistant Associate Secretary

Certified a true copy of Order No. 154/19
issued by The Public Utilities Board



Assistant Associate Secretary



June 25, 2019

Mr. Mike Triggs
General Counsel and Corporate Secretary
Manitoba Public Insurance Corporation
702 - 234 Donald Street
P.O. Box 6300, Stn. Main
Winnipeg, MB R3C 4A4

VIA EMAIL

-and-

Past Interveners of Record
(2019 GRA – per attached list)

Re: Manitoba Public Insurance (MPI) 2020/21 General Rate Application - Process for Treatment of Commercially Sensitive Information

The Public Utilities Board (Board) acknowledges receipt of the letter dated May 24, 2019 from Mike Triggs to Board Counsel, setting out MPI's proposed process for the treatment of confidential/commercially sensitive information in the 2020 GRA.

The Board also acknowledges receipt of the letter dated June 6, 2019, from counsel for the Consumers Association of Canada (Manitoba) Inc. (CAC), advising of CAC's support for the proposed process, provided that it be limited to the 2020 GRA and reviewed thereafter.

The Board is prepared to approve the process proposed by MPI for the 2020 GRA, set out in detail below, subject to the following:

1. The Board will not require the provision of an undertaking of confidentiality as a condition of granting intervener status in the GRA. However, any intervener wishing to access any confidential material will be required to provide executed undertakings and confidentiality agreements as set out below.
2. Should any third party vendor require a confidentiality agreement other than the one previously provided by MPI and attached hereto, MPI will be required to obtain Board approval of the form of confidentiality agreement to be signed.

3. Board staff shall not be required to give undertakings or execute confidentiality agreements as they are (a) subject to an oath of office which requires that they maintain the confidentiality of any information designated as such; and (b) are immune from personal liability for anything done by them in carrying out their duties, pursuant to section 23 of *The Public Utilities Board Act*.

Therefore, the process for the treatment of confidential information in the 2020 GRA will be as follows:

1. Interveners (and their legal counsel, representatives, employees, advisors, consultants and assistants) and professional advisors to the Board (and their representatives, employees, consultants and assistants) seeking access to confidential material will be required to execute:
 - a. An undertaking in the form attached hereto;
 - b. A confidentiality agreement in favour of MPI in the form attached hereto; and
 - c. Where applicable, a confidentiality agreement in favour of the third party vendor in the form attached hereto.
2. The undertakings and confidentiality agreements set out in items 1 will apply to material filed with the Board and initially claimed as confidential by MPI, and ultimately found to be confidential by the Board following the omnibus motion referred to in item 4 below.
3. Where MPI intends to claim certain material as confidential (and therefore subject to the conditions as set out in item 1):
 - a. In the public version of the filing, MPI will indicate that a claim for confidentiality has been made over that material, and redact such information as is necessary;
 - b. MPI will file the material with the Board, with a cover letter identifying it as confidential and indicating MPI's intention to seek a determination of confidential status pursuant to Rule 13; and
 - c. At the same time, MPI will provide the material claimed as confidential in a non-redacted form to those interveners and professional advisors to the Board who have provided the undertakings and confidentiality agreements set out in item 1.
4. Once all material claimed as confidential for the 2020 GRA has been filed with the Board, MPI shall file an omnibus motion pursuant to Rule 13 of the Board's Rules of Practice and Procedure, seeking confidential status of the material. The Board will then determine the process it intends to follow regarding the hearing of the motion, and will issue a decision on the confidential status of the material.

5. Any documents or information found not to be confidential by the Board will be placed on the public record, subject to MPI's right to withdraw the material pursuant to Rule 13(5).

Should any party have any questions or comments regarding the foregoing, please contact Board counsel.

Yours truly,

A handwritten signature in black ink that reads "Darren Christle". The signature is written in a cursive, flowing style.

Darren Christle, PhD, CCLP, P.Log., MCIT
Secretary/ Executive Director

DC/kl

cc. Kathleen McCandless, Board Counsel
Steve Scarfone, MPI
Anthony Lafontaine Guerra, MPI

UNDERTAKING OF CONFIDENTIALITY

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA (the "PUB")

WHEREAS on (month) (day), (year), in Procedural Order xxx/xx (the "Order"), the PUB approved the application for Intervenor Status of (name of intervenor) (the "Intervenor") to the PUB's public hearing of the (year/year) General Rate Application ("GRA") of The Manitoba Public Insurance Corporation ("MPI"), for the review and approval of base rates and premiums for universal compulsory driver and vehicle insurance to take effect on (month) (day), (year) ("(year) GRA"), subject to the condition that the Intervenor take prudent, reasonable steps to keep confidential and to protect from unauthorized disclosure all documents claimed by MPI to be confidential (until such time as the claim is withdrawn) or ordered by the PUB to be received from MPI, in confidence, pursuant to Rule 13 of the PUB's Rules of Practice and Procedure (the "Confidential Documents").

AND WHEREAS the Order permits the Intervenor, their legal counsel, representatives, employees, advisors, consultants, and assistants to receive copies of all or some of the Confidential Documents, subject to certain conditions and restrictions, including, the execution of an PUB-approved undertaking.

AND WHEREAS, I am a (lawyer, representative, employee, advisor, consultant, assistant) for/of/to the Intervenor and may, in course of my duties, handle or review some or all of the Confidential Documents in order to permit the Intervenor to meaningfully participate in the (year) GRA.

NOW WHEREFORE I DO HEREBY UNDERTAKE AND AGREE TO DO THE FOLLOWING:

1. to use Confidential Information exclusively for and within the scope of the PUB-approved intervention of the Intervenor in the (year) GRA;
2. not to divulge Confidential Information to any person who is not a panel member of the PUB, a PUB staff member designated to receive the Confidential Information or to any person who has not been authorized by the PUB to receive such information and has not filed an Undertaking with the PUB;
3. not to reproduce, in any manner, the Confidential Information except where expressly permitted by the PUB to do so;
4. to take prudent, reasonable steps to keep confidential and to protect the Confidential Information from unauthorized disclosure;
5. to return to the PUB, at its request or direction, all Confidential Information, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the PUB, a certificate of destruction at the end of the (year) GRA which, for the purposes of this paragraph, is deemed to end on the date on which the period for filing a motion to review and vary or a motion for leave to appeal the PUB's final order in respect of the (year) GRA expires or, if a motion to review and vary or motion for leave to appeal is filed, upon issuance of a final decision by the PUB or the Court of competent

jurisdiction from which no further review or appeal can or has been taken or within a reasonable time after the end of my participation in the (year) GRA;

6. with respect to Confidential Information in electronic media:
 - a. to promptly, at the end of the (year) GRA or within 10 days after the end of my participation in the (year) GRA, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the PUB Secretary a certificate of destruction in the form prescribed by the PUB pertaining to the expunged documents and materials; and
 - b. continue to abide by the terms of this Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved;
7. to observe any terms and conditions imposed by MPI or, where imposed, by the PUB, as they relate to the access, use and protection of the Confidential Information; and
8. to promptly report any violation of this Undertaking to the PUB.

I FURTHER UNDERSTAND AND AGREE THAT:

9. in this Undertaking the term "Confidential Information" means:
 - a. any information contained in the Confidential Document (including the Confidential Document itself);
 - b. any information that has been filed with the PUB by MPI that it claims is confidential; and
 - c. all evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Document or any information contained therein, that I receive, review or prepare (related materials) during the course of the (year) GRA or any appeal, review or rehearing of the PUB's decision in the proceeding for the purpose of participating in the (year) GRA or any appeal, review or rehearing from the PUB's decision in the proceeding,
10. the execution of this Undertaking is a condition of my being granted access to the Confidential Information;
11. this Undertaking must be filed with the PUB and a copy provided to MPI, prior to my receipt or review of any Confidential Information;

12. in the event that I breach this Undertaking, there may be consequences which could include, without limitation, the following:

- a. a denial or reduction of costs to, or a cost award against the Intervenor or me personally; and
- b. an immediate and absolute revocation of the right of the Intervenor and/or my right to receive and/or retain all or some of the Confidential Information, and

13. the obligations created herein shall not preclude my:

- a. using or disclosing the Confidential Information at a time when Confidential Information is generally available to the public, other than as a direct or indirect result of any disclosure by me which is prohibited hereunder; and
- b. disclosing the Confidential Information to the extent such disclosure is required by law, Court order or competent authority of any governmental body or professional discipline body, provided that, other than in respect of a mandated disclosure to the signatory's governing law society or legal professional liability insurer, the PUB and MPI are provided with notice promptly upon my becoming aware that such notice is required.

I, _____, give this Undertaking freely and voluntarily, knowing that it creates obligations which I am legally required to fulfill.

Signed and witnessed in the _____ of _____ in the _____ of _____, on this _____ day of _____, 20____.

Signature of Witness

Signature of Person Giving Undertaking

Address

Printed Name of Witness

Phone Number

Email Address

CERTIFICATE

I, _____ (recipient) of the _____ (city/town) of _____, in the _____ (province/state) of _____, certify that:

- 1) I had in my possession and under my direction and control records, reports, documents or information, or portions thereof, that were granted confidential treatment in the course of the 20____ General Rate Application (“Confidential Information”) by the Board pursuant Rule 13 of the Board’s Rules of Practice and Procedure, and had in my possession and under my direction and control evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information that I received, reviewed or prepared (“related materials”).
- 2) I executed an undertaking in accordance with Procedural Order xxx/xx to have access to the Confidential Information and related materials (the “Undertaking”).
- 3) I have made no use of the Confidential Information or related materials except as permitted pursuant to the Undertaking.
- 4) I have not disclosed the Confidential Information or related materials in any manner except as permitted by the Undertaking.
- 5) I have expunged all electronic copies of the Confidential Information and related materials from all electronic apparatus and data storage media in my possession or under my direction and control.
- 6) I have delivered to MPI or have destroyed all paper copies of the Confidential Information and related materials in my possession or under my direction and control.

SIGNATURE WITNESSED BY ME THIS _____ DAY OF _____, 20____.

CERTIFIED BY ME THIS _____ DAY OF _____, 20____.

Signature of Witness (Notary Public)

Signature of Recipient

Printed Name of Witness

DRAFT

THIS CONFIDENTIALITY AGREEMENT made this [redacted] day of [redacted], 20[redacted]

BETWEEN:

THE MANITOBA PUBLIC INSURANCE CORPORATION,
(called "MPI")

of the first part,

- and -

[redacted],
(called the "Confidant")

of the second part.

WHEREAS on [redacted], in Order xxx/xx (the "Order"), the Public Utilities Board of Manitoba (the "Board") ordered, within the course of considering MPI's [redacted] General Rate Application ("20[redacted] 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 [redacted] (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 MPI;
- (c) in the case of a disclosure to an Unauthorized Person with the prior written consent of MPI, obtain from the Unauthorized Person an undertaking or confidentiality agreement satisfactory in form to the Board and MPI, 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 MPI'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 MPI with prompt notice so that MPI 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 MPI protecting the confidential and proprietary nature of the Confidential Information sought to be compelled to be disclosed, including providing assistance to MPI 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 MPI 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.

ARTICLE 6 NO LICENCE

The Confidant agrees that the Confidential Information is the property of MPI, 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.

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 MPI may not be compensable by monetary damages alone and, accordingly, that MPI 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) **MPI:**

Executive Offices
912-234 Donald Street
Winnipeg, Manitoba R3C 4A4
Attn: General Counsel
and Corporate Secretary

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 MPI 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 MPI. 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.

MANITOBA PUBLIC INSURANCE

Per: _____

Name:

Title:

CONFIDANT

WITNESS [PRINTED NAME]

WITNESS [SIGNATURE]

[CONFIDANT SIGNATURE]

THIS CONFIDENTIALITY AGREEMENT made this [redacted] day of [redacted], 20[redacted]

BETWEEN:

[redacted],
(called the "Owner")

of the first part,

- and -

[redacted],
(called the "Confidant")

of the second part

WHEREAS on [redacted], in Order xxx/xx (the "Order"), the Public Utilities Board of Manitoba (the "Board") ordered, within the course of considering MPI's [redacted] **GRA Years** General Rate Application ("20[redacted] 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 [redacted] (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.

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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.

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ARTICLE 12 WAIVER

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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]

DRAFT