

IN THE MATTER OF: **An Application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and approval of its rate bases and premiums charged with respect to compulsory driver and vehicle insurance effective March 1, 2019.**

MOTION BRIEF
(MANITOBA PUBLIC INSURANCE)

(Seeking Leave to file Certain Round 2 Information Request Responses Confidentially)

MANITOBA PUBLIC INSURANCE
Legal Services
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PART I LIST OF DOCUMENTS TO BE RELIED ON

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1. The Affidavit of Jeffrey Crozier, <i>sworn</i> September 17, 2018	
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PART II LIST OF AUTHORITIES

1. The Public Utilities Board Rules of Practice and Procedure

PART III STATEMENT OF FACTS

- 1) On June 15, 2018, The Manitoba Public Insurance Corporation ("MPI" or the "Corporation") filed its General Rate Application for the 2019 rate year (the "2019 GRA").
- 2) On September 14, 2018, MPI filed the majority of its responses to the second round of information requests (IRs) received from The Public Utilities Board of Manitoba (the "PUB") and intervenors, non-redacted. However, it also filed one completely redacted response in answer to IR PUB (MPI) 2 024.
- 3) MPI now seeks leave of the PUB to file the documents in response to the above IR (the "Confidential Documents"), confidentially.

PART IV ISSUES TO BE DETERMINED

Issue 1: Should MPI be granted leave to file the Confidential Documents with the PUB, in confidence?

Issue 2: If so, what conditions, if any, should be placed on the access to and use of the Confidential Documents?

PART V POINTS TO BE ARGUED AND ARGUMENT

Issue 1: Should MPI be granted leave to file the Confidential Documents with the PUB, in confidence?

1) IR PUB (MPI) 2 024 and its 5 appendices each contain information that is commercial, the work product of the third party who created them and, therefore, is proprietary in nature. MPI is not authorized to make the information contained in these documents available for public use. The public release of this information could reasonably be expected to result in undue financial loss or significant harm to the competitive position of these third parties. Neither MPI nor the third party otherwise makes this information available to the public.

2) MPI is contractually bound and/or bound by a duty at law to maintain this information in confidence. Publishing this information, without authorization, exposes MPI to potential legal liability, harms its reputation generally and could damage its relationships with the third party. In the context of the 2019 GRA, MPI is only authorized to make this information available to the panel members of the PUB and to its representatives, advisors and consultants who require access. However, MPI expects that the PUB will return the Confidential Documents should it decide that they must be placed on the public record.

3) MPI respectfully submits that receiving the Confidential Documents (and the information contained therein), in confidence, outweighs the public interest in its disclosure. Without the ability to honour contractual or other legal obligations respecting

the dissemination of proprietary information, MPI may not be able to continue to conduct business with this third party in the future.

4) As a result, MPI submits that the Confidential Documents cannot be placed on the public record and that the PUB must receive this document in confidence.

5) If the PUB decides that the Confidential Documents must be placed on the public record, MPI requests the opportunity to withdraw them prior thereto (as contemplated under Rule 13(5) of the PUB Rules).

Issue 2: If leave is granted, what conditions, if any, should be placed on the access to and use of the Confidential Documents?

6) MPI does not oppose the circulation any of the Confidential Documents by the PUB, subject to the following restrictions, namely that:

a. those eligible to receive the Confidential Documents (an "Eligible Person")

be:

i. a representative, a consultant or a professional advisor of a registered intervener who has been granted standing to intervene on an issue or issues falling within the ambit of matters raised in each of the respective documents; or

ii. a representative, a consultant or a professional advisor of the PUB,

- b. the Confidential Documents not be provided to an Eligible Person until or unless they execute an Undertaking of Confidentiality and a Confidentiality Agreement, the form and content of which is acceptable to MPI and the third party (see TABs 1-3 hereof); and
- c. no use be made of the Confidential Documents or reference made to their content at any time where doing so would place the confidential information on the public record or make it available to persons other than Eligible Persons who have complied with the requirement to execute the Undertaking of Confidentiality and a Confidentiality Agreement as set out above.

9) Therefore, in the event that the PUB grants leave to file its response to IR PUB (MPI) 2 024 with the PUB, in confidence, MPI respectfully submits that it add the above as conditions to their dissemination.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF SEPTEMBER, 2018.

MANITOBA PUBLIC INSURANCE

Rer:


STEVE SCARFONE/
ANTHONY LAFONTAINE GUERRA
Legal Counsel

TAB 1

UNDERTAKING OF CONFIDENTIALITY

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA.

WHEREAS on September xx, 2018, in Order xxx/18 (the "Order"), issued in the course of The Manitoba Public Insurance Corporation's ("MPI") 2019/2020 General Rate Application ("2019 GRA"), the Public Utilities Board of Manitoba (the "Board") ordered that certain documents described therein be received in confidence, pursuant to Rule 13 of the Board's Rules of Practice and Procedure (the "Confidential Documents").

AND WHEREAS the Order directs MPI to provide non-redacted copies of the Confidential Documents to certain select individuals following their execution of this Undertaking and a prescribed confidentiality agreement.

AND WHEREAS the Order permits me, [insert name of individual entitled], in my capacity as [insert role - legal counsel, consultant, etc.] to [insert name of entity - the Board, the Canadian Association of Consumers, etc.], to receive non-redacted copies of the Confidential Documents, subject to certain conditions and restrictions.

NOW THEREFORE, in consideration of receiving access to the Confidential Documents:

1. I understand and agree:

- (a) that the term "Confidential Information" means:
 - (i) any information contained in the Confidential Documents (including the Confidential Documents themselves);
 - (ii) any information that has been filed by MPI with the Board in confidence pursuant to the Order and; and
 - (iii) all evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Documents or any information contained therein, that I receive, review or prepare (related materials) during the course of the 2019 GRA or any appeal, review or rehearing of the Board's decision in the proceeding for the purpose of participating in the 2019 GRA or any appeal, review or rehearing from the Board's decision in the proceeding,
- (b) that the execution of this Undertaking is a condition of my being granted access to the Confidential Information;
- (c) that this Undertaking will be filed with the Board;

- (d) to observe any terms and conditions imposed by MPI as they relate to the access, use and protection of the Confidential Information; and
- (e) that, in the event that I breach this Undertaking, there may be consequences which could include, without limitation, the following:
 - (i) a denial or reduction of costs to, or a cost award against, my client, my principals or me personally; and
 - (ii) an immediate and absolute revocation of my right to receive and/or retain all or some of the Confidential Information.

2. I hereby undertake:

- (a) to use Confidential Information exclusively for and within the scope of my client/principal/employer's Board-approved intervention in the 2019 GRA proceeding;
- (b) to maintain all of the Confidential Information in confidence and not to divulge it to any person save and except for panel members of the Board or to any person who has been authorized by the Board to receive such information and who has executed and filed with the Board this undertaking and the Confidentiality Agreement, unless otherwise required by law, in which case, I will promptly give written notice to the Board and MPI that such disclosure has been required;
- (c) not to copy, reproduce, in any manner, the Confidential Information except for purposes described in paragraphs (a) and (b) above;
- (d) to take prudent, reasonable steps to keep confidential and to protect the Confidential Information from unauthorized disclosure;
- (e) to indemnify and save harmless the Board from and against all claims, actions, proceedings, demands, losses, damages, costs, and expenses which may be brought against the Board or which the Board may suffer, sustain, pay or incur, resulting from, or arising in connection with, the unauthorized use or disclosure by me of the Confidential Information or the related materials;
- (f) subject to subparagraphs (g) and (h) below, within 30 days of the expiration of any appeal or review period of the Board's decision in respect of the 2019 GRA, unless otherwise directed by the Board, to:
 - (i) expunge all electronic copies of the Confidential Information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;

- (ii) deliver to MPI or destroy all paper copies of the Confidential Information and related materials in my possession or under my direction and control; and
 - (iii) provide an executed statutory declaration **(In the form attached as Appendix "A")**, to the Board and MPI,
- (g) in the event that any Board decision in respect of the 2019 GRA is the subject of a review application, to:
- (i) within 30 days following the release of the Board's final disposition of any review application;
 - 1) expunge all electronic copies of the Confidential Information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;
 - 2) deliver to MPI or destroy all paper copies of the Confidential Information and related materials in my possession or under my direction and control; and
 - 3) provide an executed statutory declaration **(In the form attached as Appendix "A")**, to the Board and MPI,
- (h) In the event that any Board decision in respect of the 2019 GRA is the subject of a leave to appeal application or appeal, to:
- (i) unless otherwise directed by a court of competent jurisdiction, within 30 days following the release of a final decision disposing of the appeal (a decision dismissing the application for permission to appeal or a final decision on appeal):
 - 1) expunge all electronic copies of the Confidential Information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;
 - 2) deliver to MPI or destroy all paper copies of the Confidential Information and related materials in my possession or under my direction and control; and
 - 3) provide an executed statutory declaration **(In the form attached as Appendix "A")**, to the Board and MPI, and

- (i) to promptly report any violation of the recipient of this undertaking to the Board and MPI, and shall take all reasonable steps to retract any unauthorized disclosure and report such activities to the Board and to MPI.
3. 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 Board and MPI are provided with notice promptly upon my becoming aware that such notice is required.

Dated at [City] [Province] this _____ day of September xx, 2018

Signature: _____

Name (please print): _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

APPENDIX "A"

STATUTORY DECLARATION

I, _____ (recipient) of the _____ (city/town) of _____, in the _____ (province/state) of _____, do solemnly declare as follows:

- 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 ("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 Rule 13 of the Board's Rules of Practice and Procedure 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.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the _____ of)
_____, in the Province of Manitoba,)
this _____ day of _____, 201____.)
)
)

(Recipient)

A Notary Public / Commissioner for Oaths
in and for the Province of Manitoba
My commission expires: _____

TAB 2

THIS CONFIDENTIALITY AGREEMENT made this xxxx day of September, 2018

BETWEEN:

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

of the first part,

- and -

[Insert name of Individual],
(called the "Confidant")

of the second part.

WHEREAS on September xx, 2018, in Order xxx/18 (the "Order"), the Public Utilities Board of Manitoba (the "Board") ordered, within the course of considering MPI's 2019/2020 General Rate Application ("2019 GRA"), that certain documents prepared in response to Round 2 Information Requests be received in confidence, pursuant to Rule 13 of the Board's Rules of Practice and Procedure (the "Confidential Documents").

AND WHEREAS the Confidential Documents contain information that is 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 this Confidentiality Agreement (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 2019 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]

[SIGNATURE]

TAB 3

THIS CONFIDENTIALITY AGREEMENT made this xxxx day of September, 2018

BETWEEN:

MITCHELL INTERNATIONAL INFORMATION SERVICES INC.,
(called "MITCHELL")

of the first part,

- and -

[Insert name of Individual]
(called the "Confidant")

of the second part.

WHEREAS on September xx, 2018, in Order xxx/18 (the "Order"), the Public Utilities Board of Manitoba (the "Board") ordered, within the course of considering MPI's 2019/2020 General Rate Application ("2019 GRA"), that certain documents prepared in response to Round 2 Information Requests be received in confidence, pursuant to Rule 13 of the Board's Rules of Practice and Procedure (the "Confidential Documents").

AND WHEREAS the Confidential Documents contain information that is 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 this Confidentiality Agreement (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 2019 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 MITCHELL;
- (c) In the case of a disclosure to an Unauthorized Person with the prior written consent of MITCHELL, obtain from the Unauthorized Person an undertaking or confidentiality agreement satisfactory in form to the Board and MITCHELL, 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 MITCHELL'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 MITCHELL with prompt notice so that MITCHELL 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 MITCHELL protecting the confidential and proprietary nature of the Confidential Information sought to be compelled to be disclosed, including providing assistance to MITCHELL 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 MITCHELL 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 pertaining to MITCHELL is the property of MITCHELL, 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 MITCHELL may not be compensable by monetary damages alone and, accordingly, that MITCHELL 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) **MITCHELL**

[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 **MITCHELL** 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 MITCHELL. 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.

**MITCHELL INTERNATIONAL
INFORMATION SERVICES INC.**

Per: _____

Name:

Title:

CONFIDANT

WITNESS [PRINTED NAME]

WITNESS [SIGNATURE]

[SIGNATURE]