

Order No. 89/18

**MOTION BY MANITOBA PUBLIC INSURANCE
SEEKING CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
IN THE 2019/2020 GENERAL RATE APPLICATION**

July 12, 2018

**BEFORE: Robert Gabor, Q.C., Chair
Irene A. Hamilton, Member
Robert Vandewater, Member**

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1. SUMMARY

By this Order, the Public Utilities Board (“Board”) grants the Motion of Manitoba Public Insurance (MPI or the Corporation) seeking confidential receipt by the Board of certain documents and information to be filed in the 2019/2020 General Rate Application (GRA or the Application). The Board provides direction on the treatment of Information Requests and Responses and any Intervener evidence arising out of the documents. The Board also establishes a timetable pertaining to the Information Requests and Responses arising out of the documents.

1.0 Overview

On June 15, 2018, MPI filed the GRA with the Board. Contained within the GRA is reference to certain documents, which MPI has requested the Board receive in confidence. Those documents are:

- 1) The business case for MPI's Five Year Strategic Plan (Space Plan Business Case);
- 2) A document identified as Attachment "C" to Appendix 17 of the Investment Chapter under Part IV of the GRA (Mercer Methodology); and
- 3) The response by Mercer (Canada) Limited (Mercer) to MPI's Request for Proposals (Response to RFP).

(the Documents)

The Documents relate to issues first reviewed in the 2018 GRA. With respect to the Space Plan Business Case, the Board heard from MPI in the 2018 GRA about a new Value Management Process (VMP) employed by MPI. As noted by the Board in Order 130/17

following the 2018 GRA, the VMP requires that business cases be prepared for new initiatives valued at or above \$500,000. The 2019 GRA contains information about the VMP, as well as information about a number of projects for which business cases have been prepared. The Space Plan Business Case is referred to in the Application, but the business case itself is not contained therein. The reason for this, according to MPI, is because the details of the Space Plan Business Case are confidential.

Also in Order 130/17, the Board directed that a Technical Conference take place to review the results of an Asset Liability Management (ALM) Study performed by Mercer for MPI. The Technical Conference took place on March 14, 2018, following which requests for additional information were made to MPI on behalf of the Board. The Mercer Methodology and the Response to RFP would serve to fulfill some of the requests for additional information; however, MPI has indicated that they contain third party confidential information and accordingly must be filed in confidence with the Board.

On June 29, 2018, MPI filed a Motion with the Board, in which it sought leave to file the Documents in confidence with the Board, on any terms the Board considers appropriate and in the public interest. MPI electronically served the Notice of Motion and a Motion Brief on the Board and the Interveners in the GRA. MPI also filed an Affidavit with the Board only, containing confidential information, in hard copy format.

On July 5, 2018, the Board received a written response on the Motion from one of the Interveners in the GRA, Consumers' Association of Canada (Manitoba) Inc. (CAC). The parties were invited to provide replies, if any, to CAC's response. No replies were received by the Board.

The other Interveners in the GRA, Coalition of Manitoba Motorcycle Groups (CMMG) and Canadian Automobile Association Manitoba (CAA), did not file any response to the Motion.

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

2. PARTIES' POSITIONS AND BOARD FINDINGS

2.0 MPI

MPI took the position that the Documents contain personal, financial, commercial, scientific or technical information, have been consistently treated as confidential, and that the interest in maintaining the confidentiality of the Documents outweighs the public interest in their disclosure.

In the Application, MPI described the Space Plan Business Case as a multi-phase, multi-year project focusing on the redevelopment of MPI's physical facilities. In the first phase, a budget of \$2.065 million was approved for 2018/19. However, according to MPI, details of the business case are commercially sensitive. MPI argued in its Motion that the Space Plan Business Case contains financial and commercial information which would influence a number of the key assumptions underpinning its analysis. MPI stated that since the preparation of the Space Plan Business Case in January 2018, it has been maintained in confidence. It is not publicly available and it has only shared its details outside MPI with its consultant. MPI further stated that release of the information in the Space Plan Business Case would defeat the purpose of increasing revenue-generating opportunities for MPI, which benefits all ratepayers. Public release of the information in the Space Plan Business Case would cause harm to MPI's competitive position.

With respect to the Mercer Methodology, MPI submitted that it is commercial/technical in nature, and is proprietary to Mercer. Mercer constrains the use of the information by MPI, and its public release could reasonably be expected to result in undue financial loss to Mercer or to harm its competitive position. MPI also stated that it believes it is obligated

to maintain the Mercer Methodology in confidence due to its contractual obligations to Mercer.

Lastly, with respect to the Response to RFP, MPI submitted that it has not been authorized by Mercer to release the information on the public record. The Response to RFP also contains information about the Mercer Methodology and other information which is proprietary to Mercer.

MPI would not oppose the circulation of the Space Plan Business Case, under certain restrictions. MPI also advised that Mercer has authorized MPI to disclose the Mercer Methodology and the Response to RFP, also subject to restrictions. Those restrictions would be as follows:

- 1) The persons eligible to receive the Space Plan Business Case would be representatives, consultants or professional advisors of the Board, or those Interveners who have been granted standing to intervene on an issue or issues falling within the ambit of the matters raised in the business case;
- 2) The persons eligible to receive the Mercer Methodology and the Response to RFP would be representatives, consultants or professional advisors of the Board or representatives, legal counsel or consultants to CAC;
- 3) The Documents would not be provided to an eligible person unless or until they execute Undertakings of Confidentiality and Confidentiality Agreements (forms of which were provided to the Board by MPI); and
- 4) No use could be made of the Documents, or reference made to their content, at any time where doing so would place the information contained therein on the public record, or make the information available to persons other than those

eligible who have executed an Undertaking of Confidentiality and a Confidentiality Agreement.

2.1 CAC

CAC advised that it does not object to the conditions requested by MPI for the distribution of the Documents. CAC acknowledged that treating the Documents as confidential would impair the public interest in disclosure of the information; however, the proposed conditions on access would be a minimal impairment to the public interest.

CAC requested one amendment to the approach requested by MPI, which according to it would clarify the process for the treatment of the Documents and the information arising therefrom. CAC requested that if it, or another Intervener, were to file a report as evidence in the GRA based upon or referring to the information contained in the Documents, that evidence should be filed in confidence with the Board and MPI on the date required (September 24, 2018, per Order 82/18). In consultation with MPI, the Intervener would then determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by September 26, 2018.

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, and is satisfied that the Documents fall within the ambit of Rule 13(2). The restrictions requested on the distribution of the Documents are necessary in order to protect the commercial interests of MPI and Mercer.

With respect to the Space Plan Business Case, the Board accepts that public disclosure of the information contained therein could affect MPI's competitive position and harm a revenue-generating opportunity for MPI, which could in turn have a negative impact on ratepayers. Therefore, the interest in maintaining the confidentiality of the business case outweighs the interest of public disclosure.

The Board also accepts that the Mercer Methodology and the Response to RFP contain confidential and proprietary information of Mercer, and that MPI is not authorized to reproduce or redistribute those documents or the information contained therein. The Board finds that Mercer's interest in confidentiality outweighs the public interest in the release of the information on the public record. Placing the conditions requested on the distribution of the Mercer Methodology and the Response to RFP will serve to uphold the general commercial interest of preserving confidential information.

Accordingly, the Board grants MPI's Motion to receive the Documents in confidence. The Board accepts the conditions imposed on the receipt of the Documents as outlined in MPI's Motion materials, and orders that the Documents be distributed only on the terms as set out in Section 3 below.

The Board notes that MPI has requested that only those Interveners who have been granted standing to intervene on an issue or issues falling within the ambit of the matters raised in the Space Plan Business Case be eligible to receive the Space Plan Business Case. While the Board did not place any restrictions on approved Interveners as to the issues that they may review in the GRA, based on the applications for intervener status filed with the Board, it appears that only CAC intends to address issues related to the Space Plan Business Case. Therefore, the Board will restrict the distribution of the Space Plan Business case to its representatives, consultants and professional advisors, and to those of CAC.

The Board recognizes that further evidence containing confidential information from the Documents may be generated as a result of the distribution of the Documents to Interveners and the Board. Therefore, the Board will require that any Information Requests or other evidence arising out of the information contained in the Documents be subject to the same restrictions as the Documents themselves.

The Board further accepts the amendments proposed by CAC are necessary in order to preserve the confidentiality of the Documents and the information contained therein, and therefore orders that if any Intervener files a report as evidence in the GRA based upon or referring to the information contained in the Documents, that evidence shall be filed in confidence with the Board and MPI on September 24, 2018, per Procedural Order 82/18. The Intervener shall then consult with MPI and determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by September 26, 2018.

Finally, in Order 82/18, the Board fixed a Timetable for the GRA, but stated that it would determine the process and timetable for this Motion once filed. Therefore, the Timetable did not contain information regarding deadlines or dates for the Motion or Information Requests arising out of the Documents. The Board hereby orders that any First Round Information Requests arising out of the Documents shall be served on MPI on **Wednesday, July 25, 2018**. MPI shall provide responses to the First Round Information Requests in accordance with the Timetable attached as **Schedule "B"** to Order 82/18, on August 8, 2018. Second Round Information Requests and Responses arising out of the Documents shall also follow the Timetable attached as **Schedule "B"** to Order 82/18.

3. IT IS THEREFORE ORDERED THAT:

3.1 The Board grants MPI's Motion, and hereby grants leave to MPI to file the following documents in confidence with the Board:

- a. The business case for MPI's Five Year Strategic Plan (Space Plan Business Case);
- b. A document identified as Attachment "C" to Appendix 17 of the Investment Chapter under Part IV of the GRA (Mercer Methodology); and
- c. The response by Mercer (Canada) Limited (Mercer) to MPI's Request for Proposals (Response to RFP).

(the Documents)

3.2 The following persons shall be eligible to receive a copy of the Documents:

- a. The Space Plan Business Case: representatives, consultants or professional advisors of the Board, or of Consumers' Association of Canada (Manitoba) Inc. (CAC);
- b. The Mercer Methodology and the Response to RFP: representatives, consultants or professional advisors of the Board, or representatives, legal counsel or consultants of CAC.

3.3 Any eligible person as set out in Directive 3.2 intending to receive the Documents shall execute an Undertaking of Confidentiality and a Confidentiality Agreement prior to the receipt of any of the Documents.

- 3.4 **Schedule "A"**, as attached, shall be the form of Undertaking of Confidentiality and Confidentiality Agreement to be executed by any eligible person for the receipt of the Space Plan Business Case.
- 3.5 **Schedule "B"**, as attached, shall be the form of Undertaking of Confidentiality and Confidentiality Agreement to be executed by any eligible person for the receipt of the Mercer Methodology and/or the Response to RFP.
- 3.6 No use shall be made of the Documents, or reference made to their contents, at any time where doing so would place the Documents or the information contained therein on the public record or make them available to persons other than those authorized as set out herein who have executed the required Undertakings of Confidentiality and Confidentiality Agreements.
- 3.7 The terms and conditions placed on the receipt of the Documents as set out in Directives 3.2 to 3.6 shall apply to the receipt of Information Requests and Information Request Responses arising out of the Documents and the information contained therein.
- 3.8 First Round Information Requests arising out of the Documents shall be served on MPI on Wednesday, July 25, 2018. MPI shall provide responses to the First Round Information Requests in accordance with the Timetable attached as **Schedule "B"** to Order 82/18, on August 8, 2018.
- 3.7 Second Round Information Requests and Responses arising out of the Documents shall be filed in accordance with the Timetable attached as **Schedule "B"** to Order 82/18.
- 3.9 If any Intervener files a report as evidence in the GRA based upon or referring to the information contained in the Documents, that evidence shall be filed in

confidence with the Board and MPI on September 24, 2018. The Intervener shall consult with MPI and determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by September 26, 2018.

- 3.9 The terms and conditions placed on the receipt of the Documents as set out in Directives 3.2 to 3.6 shall apply to the receipt of any of those portions of Intervener evidence containing information from the Documents.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."

Chair

"Darren Christle MPA, BA, CCLP, P.Log, MCIT"

Secretary

Certified a true copy of Order No. 89/18
issued by The Public Utilities Board

Darren Christle

Secretary

SCHEDULE "A"**UNDERTAKING OF CONFIDENTIALITY**

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA

WHEREAS on July 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 a document described therein as the "Space Plan Business Case" be received in confidence, pursuant to Rule 13 of the Board's Rules of Practice and Procedure (the "**Confidential Document**").

AND WHEREAS the Order directs MPI to provide, non-redacted copies of the Confidential Document 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 Document, subject to certain conditions and restrictions.

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

1. I understand and agree:
 - (a) that the term 'Confidential Information' means:
 - (i) any information contained in the Confidential Document (including the Confidential Document itself);
 - (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 Document or any information contained therein, that I receive, review or prepare (related materials) during the course of the 2018 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 July 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 _____, 20__.

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

(Recipient)

THIS CONFIDENTIALITY AGREEMENT made this xxxx day of July, 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 July 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 a document described as the Space Plan Business Case" be received in confidence, pursuant to Rule 13 of the Board's Rules of Practice and Procedure (the "**Confidential Document**").

AND WHEREAS the Confidential Document contains information that is confidential and commercially sensitive.

AND WHEREAS the Order directs MPI to provide a non-redacted copy of the Confidential Document 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 Document, 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 Document (and includes the Confidential Document itself) 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 | b) Confidant: |
| Executive Offices | [Insert Address] |
| 912-234 Donald Street | [Insert Address] |
| Winnipeg, Manitoba R3C 4A4 | [City] [Province] [Postal Code] |
| Attn: General Counsel
and Corporate Secretary | 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:

WITNESS [PRINTED NAME]

CONFIDANT

WITNESS [SIGNATURE]

[SIGNATURE]

SCHEDULE "B"**UNDERTAKING OF CONFIDENTIALITY**

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA

WHEREAS on July 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 documents described therein as the Mercer Methodology" and the Mercer Response to RFP," 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 all or some 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 2018 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, MPI and Mercer 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, MPI and Mercer,
- (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, MPI and Mercer,
- (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, MPI and Mercer, and
 - (i) to promptly report any violation of the recipient of this undertaking to the Board, to MPI and to Mercer, and shall take all reasonable steps to retract any unauthorized disclosure and report such activities to the Board, MPI and Mercer.

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, MPI and Mercer are provided with notice promptly upon my becoming aware that such notice is required.

Dated at [City] _____, _____ [Province] this _____ day of July 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 _____, 20__.

(Recipient)

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

THIS CONFIDENTIALITY AGREEMENT made this xxxx day of July, 2018

BETWEEN:

**MERCER (CANADA) LIMITED,
(called MERCER")**

of the first part,

- and -

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

of the second part

WHEREAS on July xx, 2018, in Order xxx/18 (the "**Order**"), the Public Utilities Board of Manitoba (the "**Board**") ordered, within the course of considering Manitoba Public Insurance's ("**MPI**") 2019/2020 General Rate Application ("**2019 GRA**"), that documents described as the 'Mercer Methodology" and the "Mercer Response to RFP" 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 proprietary in nature and which is the lawful property of Mercer.

AND WHEREAS the Order directs MPI to provide 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 Mercer, 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 Mercer;
- (c) In the case of a disclosure to an Unauthorized Person with the prior written consent of Mercer, obtain from the Unauthorized Person an undertaking or confidentiality agreement satisfactory in form to the Board and Mercer, 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 Mercer'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 Mercer with prompt notice so that Mercer 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 Mercer protecting the confidential and proprietary nature of the Confidential Information sought to be compelled to be disclosed, including providing assistance to Mercer 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 Mercer 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 Mercer, 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 Mercer may not be compensable by monetary damages alone and, accordingly, that Mercer 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) **Mercer**

[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 Mercer 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 Mercer. 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.

MERCER (CANADA) LIMITED

Per: _____
Name:
Title:

WITNESS [PRINTED NAME]

CONFIDANT

WITNESS [SIGNATURE]

[SIGNATURE]