

To: Morgan Stanley Infrastructure Inc. as adviser to the Morgan Stanley Infrastructure Partners investing platform and its current or future investment vehicles with its principal office at 1585 Broadway, 39th Floor New York, New York 10036 USA

(*MSI* or *you*)

Strictly private and confidential

..9.. June 2021

Dear Sir or Madam

Confidentiality undertaking

1. THE PURPOSE OF THIS LETTER

- 1.1 You have expressed an interest in potentially making a recommended offer (whether implemented by way of a scheme of arrangement or a takeover offer) to acquire the whole of the issued and to be issued share capital of Augean plc (the **Company, us** or **we**) (the **Proposed Transaction**).
- 1.2 We are prepared to enter into discussions with you and to provide you with certain Confidential Information relating to the Company and its Group in order for you to consider the Proposed Transaction on the terms of this letter. In consideration of our disclosing Confidential Information to you for this purpose, you agree and undertake to us in the terms of this letter. The undertakings in this letter are given in our favour and in favour of each of our Connected Persons.
- 1.3 Certain terms and expressions used in the main body of this letter are defined in the schedule (**Schedule**).

2. TREATMENT OF CONFIDENTIAL INFORMATION

- 2.1 Unless we otherwise give our express consent in writing and subject to paragraph 3 you will, and will procure that each of your Connected Persons will:
 - (a) hold the Confidential Information in strict confidence and take all commercially reasonable precautions necessary to maintain its confidential status;
 - (b) use the Confidential Information solely for the purpose of considering the Proposed Transaction and not for any other purpose; and
 - (c) treat the Confidential Information at all times in accordance with the DP Legislation and, in particular, to ensure that no Confidential Information that is personal data (as defined in the DP Legislation) is transferred in breach of the DP Legislation.
- 2.2 The undertakings in paragraph 2.1 and paragraph 4 shall not apply to Confidential Information which:
 - (a) was already in the public domain when it was first disclosed to you or one of your Connected Persons;
 - (b) subsequently enters the public domain, other than through a breach of this letter by you or any of your Connected Persons;

[Signature page to Confidentiality Undertaking]

- (c) you can establish to our reasonable satisfaction is already in your lawful possession or that of any of your Connected Persons and free from any obligation of secrecy or confidence;
- (d) you can establish to our reasonable satisfaction subsequently comes lawfully into your possession or that of any of your Connected Persons from a source other than the Company or any of its Connected Persons and which source does not owe the Company or any of its Connected Persons any obligation of confidentiality in relation to it;
- (e) is independently developed by you or any of your Connected Persons without the use of Confidential Information; or
- (f) if the Proposed Transaction is implemented, relates solely to the business of the Company.

3. **PERMITTED DISCLOSURE**

3.1 You, or any of your Authorised Recipients, may disclose Confidential Information to:

- (a) any of your Connected Persons to the extent that such Connected Person strictly needs access to that Confidential Information for the purpose of evaluating, negotiating, advising upon or implementing the Proposed Transaction; and
- (b) potential co-investors or providers of debt or equity finance, (the **Permitted Persons**), in connection with the Proposed Transaction and to their professional advisors engaged in relation to the Proposed Transaction, provided that:
 - (i) prior to the disclosure of Confidential Information to any Permitted Person who is a potential co-investor or a provider of debt or equity finance, you will provide details of their identity and proposed participation in the Proposed Transaction to us along with details of securities of the Company in which they are interested (if any);
 - (ii) any Permitted Person to whom Confidential Information is disclosed shall thereafter be a Connected Person for the purposes of this letter;
 - (iii) you (or the relevant Connected Person making the disclosure) inform the Connected Persons concerned that the Confidential Information is confidential and of the existence and terms of this letter; and
 - (iv) you will procure that any such Connected Persons comply with the terms of this letter as if they were parties to it.

3.2 You, or any of your Authorised Recipients, may further disclose Confidential Information to the extent that you or any Authorised Recipient is required or requested to do so by applicable law or regulation, any order of a court of competent jurisdiction or any competent governmental, judicial or regulatory authority or body (including the Panel and any relevant stock exchange on which your or the relevant Authorised Recipient's securities are admitted to trading), provided that before disclosing any such information you or the relevant

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Authorised Recipient will (to the extent permitted by law or applicable regulation and as practicable in the circumstances) use commercially reasonable endeavours to:

- (a) inform us of the basis on which disclosure is required; and
- (b) take such steps as we may reasonably require to resist or minimise such disclosure (except where such steps would result in adverse consequences for you or the Authorised Recipient concerned).

3.3 If you or any Authorised Recipient is not able to inform us before any Confidential Information is disclosed under paragraph 3.2, you will (to the extent permitted by law or applicable regulation) inform us as soon as practicable after the disclosure is made of the circumstances of the disclosure and of the information that has been disclosed.

3.4 Notwithstanding the foregoing, neither you nor your Authorised Recipients will be required to give notice to us or any third party of any disclosure made to or requested by any banking, financial, securities or similar supervisory or regulatory or governmental authority exercising its supervisory, examination or audit functions over you or any of your Authorised Recipients.

4. **INFORMATION TO BE DESTROYED OR RETURNED**

If we so request of you in writing at any time, you will promptly and without undue delay return to us or (at our election) destroy all Confidential Information (including any analyses, reports or documents which contain or reflect, or are derived or generated from, any such information) which is in your or your Connected Persons' possession or under your or your Connected Persons' control, provided that:

- (a) you and your Connected Persons may retain any Confidential Information contained in any board papers or minutes;
- (b) you and your Connected Persons shall only be required to take all reasonable steps to expunge or erase Confidential Information from any computer or other electronic device;
- (c) you and your Connected Persons will not be obliged to destroy, return or erase copies to the extent that they contain insignificant extracts from or references to Confidential Information, or which are only copies because they refer to the Proposed Transaction; and
- (d) you and any Connected Person will be permitted to retain any Confidential Information which is required to be retained by law or to satisfy the rules or regulations of any regulatory body or stock exchange, or which it is customary or required to retain in accordance with the rules or recommendations of any relevant professional body or internal compliance procedure (including any electronic back-up copies made in the ordinary course of business),

provided, in each case, that the provisions of this letter shall continue to apply to any Confidential Information retained in accordance with this paragraph 4 and any of the matters referred to in paragraph 2.1(d) until it expires in accordance with section 9.1 of this letter.

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5. **STANDSTILL**

5.1 You represent and warrant that, as at the date of this letter neither you nor has any direct or indirect interests in securities of the Company or any other member of its Group and neither you nor any of your Connected Persons is directly or indirectly a party to any agreement, arrangement or understanding (whether legally binding or not) in relation to any such interests in securities.

5.2 You agree and undertake that, without the prior written consent of the Company, for a period of 12 months from the date of this letter, you will not, and will procure that none of your Connected Persons (other than any professional adviser of any member of your Group) who receive Confidential Information will, directly or indirectly and whether alone or acting in concert with any other person:

- (a) acquire or offer to acquire, or cause any other person to acquire or offer to acquire, any interest in any shares or other securities of the Company or enter into any agreement, arrangement or understanding (whether or not legally binding) or do or omit to do any act as a result of which it or any other person will or may acquire an interest in any shares or other securities of the Company;
- (b) announce or make, or cause any other person to announce or make, an offer to acquire the Company or (unless required to do so by the Panel pursuant to Rule 2.2 of the Code or by law) announce that you, any of your group undertakings or any other person, is interested in acquiring the Company;
- (c) enter into any agreement, arrangement or understanding (whether or not legally binding) or do or omit to do any act as a result of which it or any person may become obliged (under the Code or otherwise) to announce or make an offer to acquire the Company;
- (d) act in concert with or enter into any agreement, arrangement or understanding (whether or not legally binding) with any other person in connection with any offer to acquire the Company to be made or announced by that other person or any member of its Group;
- (e) enter into any agreement, arrangement or understanding (whether or not legally binding) with any person with respect of the holding, voting or disposition of any shares or other securities of the Company; or
- (f) solicit, or make or participate in any solicitation of, or seek to persuade, shareholders of the Company to vote in a particular manner at any meeting of the shareholders of the Company, or requisition or join in requisitioning any general meeting of the Company.

5.3 The restrictions in paragraph 5.2 shall cease to apply if:

- (a) you announce an offer under Rule 2.7 of the Code to acquire the Company which is unanimously recommended by the directors of the Company;
- (b) a third party which is not acting in concert with you announces a possible offer under Rule 2.4 of the Code to acquire the Company and in that announcement or any

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subsequent public statement the board of directors of the Company state their intention to unanimously recommend any such offer;

- (c) a third party which is not acting in concert with you announces an offer under Rule 2.7 of the Code to acquire the Company (whether such offer is recommended or not);
- (d) the Company or any of its group undertakings enters into, or announces that it is proposing to enter into, a reverse takeover or "whitewash" proposal (each as referred to in the Code);
- (e) the Company or any of its group undertakings enters into, or announces that it is proposing to enter into a formal sale process in accordance with the requirements of the Code;
- (f) a third party (not connected, associated or acting in concert with you) acquires an interest in the Company's shares such that such third party and any person connected, associated or acting in concert with such third party carries over 20% (save that, the forgoing shall not apply to Harwood Capital LLP or any client advised by Harwood Capital LLP) of the voting rights attaching to all issued Company shares; or
- (g) following the commencement of a voluntary or involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any substantial part of its property.

5.4 The representations in paragraph 5.1 and the undertakings in paragraph 5.2 shall not apply to:

- (a) the acquisition of any interest in shares or other securities of the Company by any connected fund manager or principal trader (each as defined in the Code); or
- (b) prevent any of your financial advisors from taking any action in the normal course of its investment or advisory business, provided that such action is not taken pursuant to your instructions (or on your behalf) or anyone else to whom Confidential Information has been provided.

5.5 Furthermore, and for the avoidance of any doubt, nothing in this letter shall be construed to limit your activities in the normal course of business including, without limitation, brokerage, investment advisory, financial advisory, anti-raid advisory, merger advisory, financing, asset management, trading, market making, arbitrage and other similar activities conducted in the ordinary course of its business, provided that the individuals performing such activities shall not have received any Confidential Information and such activity is entirely unrelated to your interest in potentially acquiring the Company.

6. **NO REPRESENTATION OR WARRANTY**

6.1 You will be responsible for making your own assessment of the Confidential Information and of whether you wish to proceed with the Proposed Transaction. You understand that the

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Confidential Information does not purport to be all inclusive and that no representation or warranty is made by or on behalf of us or any of our Connected Persons (or shall be implied) as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.

6.2 Accordingly, you agree with us on your own behalf and on behalf of each of your Connected Persons that neither we nor any of our Connected Persons:

- (a) has any liability to you or any other person resulting from the use of Confidential Information by you or them or any other person; or
- (b) shall be under any obligation to provide further information, to update the Confidential Information or to correct any inaccuracies, or to enter into or continue discussions or negotiations in respect of the Proposed Transaction.

The terms of this paragraph 6.2 may not be varied or terminated without the prior written consent of our Connected Persons. This paragraph 6.2 does not exclude or limit any liability for, or remedy in respect of, fraudulent misrepresentation, and the statement in paragraph 6.2(b) is made subject to the terms of any written and legally binding agreement or agreements entered into between any member of your Group and any member of the Company's Group in relation to the Proposed Transaction (if and when signed).

6.3 You acknowledge and agree that neither we nor any of our Connected Persons owes any duty of care to you, your Connected Persons or any other person, and that no person other than us or any of our respective Connected Persons has any authority to make or give any statement, warranty, representation or undertaking on behalf of us in connection with the Proposed Transaction, subject to the terms of any written and legally binding agreement or agreements entered into between any member of your Group and any member of the Company's Group in relation to the Proposed Transaction (if and when signed).

7. **RESTRICTIONS ON CONTACT WITH CERTAIN PARTIES**

7.1 Unless we otherwise agree, all communications with us in relation to your interest in acquiring the Company should be addressed only to and conducted only with:

- (a) our financial adviser, Rothschild & Co.; or
- (b) our legal adviser, Ashurst LLP.

In particular, neither you nor any of your Connected Persons shall contact or communicate with any of our (or any member of our Group's) directors, officers or employees, creditors, customers or suppliers in connection with your interest in acquiring the Company, or attend any of our or our Group's business premises or sites without our prior written consent. Nothing in this letter shall be construed to limit the activities in the normal course of business of you or your Connected Persons provided that the individuals performing such activities shall not have used the Confidential Information in connection therewith.

7.2 Further, you will not, and will procure that none of your Connected Persons who receive Confidential Information will, directly or indirectly, for a period of 12 months from the date of this letter, without our prior written consent:

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- (a) employ or offer to employ, or solicit for employment or endeavour to entice away, any individual who is at any time during that 12 month period a Senior Employee, provided that the placing of an advertisement of a post available to members of the public generally and the employment of any persons pursuant to any such advertisement shall not amount to a breach of this paragraph 7.2(a), further this paragraph 7.2(a) shall not apply to a recruitment offer made to or employment of any person who contacts you or any member of your Group solely on his or her own initiative and without any direct or indirect solicitation or encouragement on your part or the part of your Connected Persons; or
- (b) deal with or seek or agree to deal with, or seek the custom of, any of our suppliers or customers or suppliers to or customers of any member of our Group which is or has been such a supplier or customer at any time in the 12 months from the date of this letter or the 12 months before the date of this letter. Nothing in this paragraph 7.2(b) will prevent you or any member of your Group from dealing with your customers and suppliers in the ordinary course of business, as long as you or they do not refer in any way to any Confidential Information or to your interest in acquiring the Company.

7.3 You acknowledge and agree that the provisions of paragraphs 7.1 and 7.2 are reasonable and proportionate for the purposes of protecting the legitimate interests of the Company and its Connected Persons.

8. **INSIDE INFORMATION**

8.1 You recognise and accept, and will advise your Connected Persons who are or become aware of Confidential Information, that the Confidential Information is given and any negotiations regarding the Proposed Transaction are taking place in confidence, and that the Proposed Transaction and some or all of the Confidential Information may be *inside information* for the purposes of the Criminal Justice Act 1993 (the **CJA**) and/or the Market Abuse Regulation (EU) 596/2014 (as it forms part the laws of the UK by virtue of the European Union (Withdrawal) Act 2018)(as amended) (**UK MAR**) and that, as such, you will not:

- (a) deal in securities that are price-affected securities (as defined in the CJA) in relation to any inside information, encourage another person to deal in price-affected securities or disclose any inside information except as permitted by the CJA before the inside information is made public;
- (b) engage or attempt to engage in insider dealing (as defined in UK MAR), recommend that another person engage in insider dealing or induce another person to engage in insider dealing on the basis of any inside information;
- (c) unlawfully disclose any inside information (as defined in UK MAR); or
- (d) engage or attempt to engage in behaviour based on any inside information which would amount to market manipulation (as defined in UK MAR).

9. **GENERAL**

9.1 Unless otherwise expressly time limited, the terms of this letter shall apply for a period of 18 months from the date of this letter.

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- 9.2 The Company reserves the right in its sole and absolute discretion to terminate discussions and negotiations relating to the Proposed Transaction at any time and without any liability to you or any of your Connected Persons (including any liability for reimbursement of costs or otherwise), but such termination shall not affect the terms of this letter which shall remain in full force and effect.
- 9.3 Without affecting any other rights or remedies that we may have, you and we acknowledge, for and on behalf of ourselves and our Connected Persons, that:
- (a) a person with rights under this letter may be irreparably harmed by any breach of its terms or breach of confidence, and that damages alone may not necessarily be an adequate remedy;
 - (b) without affecting any other rights or remedies if a breach of the terms of this letter or breach of confidence occurs or is threatened, the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, may be available; and
 - (c) you shall, if any of the remedies set out in paragraph 9.3(b)9.3(b) are sought in relation to any threatened or actual breach of the terms of this letter, waive any rights you have to oppose that remedy on the grounds that damages would be an adequate alternative (without prejudice to your right to assert that there has been no breach of the terms of this letter or breach of confidence).
- 9.4 The rights and remedies contained in this letter are cumulative and not exclusive of any rights or remedies provided by law.
- 9.5 No failure or delay by the Company in exercising any right or remedy provided by this letter or by law shall operate as a waiver of that or any other right or remedy, and no single or partial exercise of any right or remedy will preclude any further exercise of it.
- 9.6 If, and to the extent that, any provision of this letter is held to be invalid or unenforceable (including in the event that the Panel determines that our agreement to the relevant provision was not permitted under Rule 21.2 of the Code), it shall be given no effect and shall be deemed not to be included in this letter, but everything else in this letter will continue in full force and effect.
- 9.7 To the extent that any Confidential Information is covered or protected by privilege, the supply or disclosure of that Confidential Information in accordance with this letter does not constitute a general waiver of privilege or any other rights which the Company or any member of the Group or any of their respective Connected Persons may have in respect of such Confidential Information.
- 9.8 Each of our Connected Persons shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this letter, subject to and in accordance with the terms of paragraph 9.10 (as to governing law and jurisdiction) and, save as provided in paragraph 6.2, the term that the parties to this letter may by agreement terminate or rescind or vary it in any way without the consent of any of our Connected Persons. Save as aforementioned, a person who is not a party to this letter shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

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- 9.9 This letter may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this letter by email attachment shall be an effective mode of delivery.
- 9.10 This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to all Disputes. Each party waives any objection to the exercise of that jurisdiction
- 9.11 This letter sets out the whole agreement between the Company and you in respect of the subject matter of this letter. It supersedes any previous draft, agreement, arrangement or understanding between us, whether in writing or not, relating to its subject matter and excludes any warranty, condition or other understanding implied at law or by custom, usage or course of dealing.
- 9.12 Notwithstanding anything to the contrary in this letter, Morgan Stanley and its affiliates (the **Morgan Stanley Group**) will not be precluded from representing third parties or acting as principal in transactions which may involve Augean plc or any member of its Group or the Proposed Transaction, provided that the Morgan Stanley Group does not use any Confidential Information in connection therewith.

Yours faithfully

By for and on behalf of

AUGEAN PLC

Agreed and accepted

By  ... for and on behalf of

MORGAN STANLEY INFRASTRUCTURE INC.

SCHEDULE

In this letter:

acting in concert has the meaning given in, and shall be construed in accordance with, the Code;

Authorised Recipient means each of your Connected Persons who strictly needs access to Confidential Information for the purposes of evaluating, negotiating, advising upon or implementing the Proposed Transaction;

Code means the City Code on Takeovers and Mergers;

Confidential Information means:

- (a) the fact of your interest in acquiring the Company, that negotiations are taking place with respect to such a transaction, the status or progress of any such negotiations or discussions, and the existence or contents of this letter; and
- (a) any information (of whatever nature and in whatever form) supplied by the Company or any of the Company's Connected Persons to you or any of your Connected Persons, whether, on or after the date of this letter in connection with the Proposed Transaction or otherwise related directly or indirectly to the Company or any member of its Group or its or their respective businesses, its shareholders or the Proposed Transaction, together with any analyses, reports or documents which contain or reflect, or are derived from or generated from, any such information;

Connected Person means, in relation to any party:

- (a) each member of its Group;
- (b) its and each member of its Group's directors, officers, employees, advisers, agents, partners, consultants and representatives (and any directors, officers, employees, advisers and partners of any such advisers, agents and representatives); and
- (c) in your case, any Permitted Person to whom Confidential Information is disclosed.

Disputes means all disputes arising out of, or in connection with, this letter including, without limitation:

- (a) claims for set-off and counterclaims;
- (b) disputes arising out of, or in connection with, the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this letter; and
- (c) disputes arising out of, or in connection with, any non-contractual obligations arising out of, or in connection with, this letter;

DP Legislation means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) that governs the processing of personal data to which a party is subject, including without limitation, as applicable, the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679; the UK GDPR (as defined by the Data Protection Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) as it forms part of the laws of the UK by virtue of the European Union (Withdrawal) Act 2018 (as amended);

Group means, in relation to a body corporate, it and its *group undertakings* as such term construed in accordance with section 1161(5) of the Companies Act 2006;

interests has, as regards interests in shares or other securities, the meaning given in, and shall be construed in accordance with, the Code;

offer means a general, partial, tender or other type of offer including, without limitation, an acquisition, takeover or merger transaction (however effected including any transaction involving a dual holding company structure), reverse takeover, scheme of arrangement or other court scheme, offer by a parent company for shares in its subsidiary undertaking, share exchange or similar transaction;

Panel means the UK Panel on Takeovers and Mergers;

person includes a reference to a body corporate, association or partnership; and

Senior Employee means an officer or employee of the Company or any member of our Group with a gross salary (excluding bonus) of over £50,000 per annum.

The **ejusdem generis** principle of construction shall not apply to this letter. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

References in this letter to **paragraphs** are to paragraphs of this letter.

Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.