



**Strictly Private and Confidential**

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Brookfield Place, 181 Bay Street, Suite 250  
  
Toronto, Ontario M5J 2T3, Canada

9 August 2017

Dear Philip and Albert

Sutton Harbour Holdings plc ("Target")

We understand that you are considering the making of an offer to acquire over 50 per cent. of the issued and to be issued share capital of Target, to be structured through an entity to be owned and controlled by each of you (the "Proposed Acquisition").

In consideration of Target agreeing to make available to you and your advisers certain financial and other information relating to Target and its Group (as defined below), you hereby undertake to Target in the terms set out in this letter.

**1. Interpretation**

1.1 The following expressions have the following meanings unless inconsistent with the context:

- |                                   |  |
|-----------------------------------|--|
| <b>"Business Day"</b>             | a day that is not a Saturday, Sunday or public or bank holiday in England and Wales  |
| <b>"Code"</b>                     | the City Code on Takeovers and Mergers as from time to time amended and interpreted by the Panel   |
| <b>"Confidential Information"</b> | (a) all information of whatever nature used in or otherwise relating to the business, customers or financial affairs of Target or any member of its Group including information relating to trade secrets, know-how, ideas, computer systems and computer software, future projects, business development or planning, commercial relationships and negotiations, the marketing of goods or services (including customer names and lists, sales targets and statistics) which is made available (whether before or after the date of this letter) in any form or medium to you, your officers, employees, advisers or agents by Target or any of its officers, employees, advisers or agents and |

includes all analyses, compilations, notes, studies, plans, memoranda or other documents which contain or otherwise reflect or is generated from such information; and

- (b) all information relating, directly or indirectly, to the Proposed Acquisition including the existence of the Proposed Acquisition, the existence and contents of this letter and all discussions and negotiations between you and Target or any member of Target's Group

**"Group"**

in relation to any person, its Holding Companies, its Subsidiaries and the Subsidiaries of any of its Holding Companies from time to time ("**Holding Company**" and "**Subsidiary**" having the meanings set out in section 1159 Companies Act 2006, as amended and for the purposes of section 1159(1) a company (the first company) shall be treated as a member of another company if:

- (a) any of its subsidiaries is a member of that other company; or
- (b) any shares in that other company are held by a person acting on behalf of the first company or any of its subsidiaries; or
- (c) any shares in that other company are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares in the first company).

**"Panel"**

the Panel on Takeovers and Mergers

1.2 Any phrase introduced by the term "**include**", "**including**", "**in particular**" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

1.3 References to persons will include individuals, bodies corporate, unincorporated associations and partnerships.

**2. Confidential Information**

2.1 You will treat and keep the Confidential Information as secret and confidential and will not, without Target's prior written consent (which may be given on such terms as Target considers appropriate), directly or indirectly, communicate or disclose, or allow to be communicated or disclosed, (whether in writing or orally or in any other manner) any Confidential Information to any other person other than to any director or senior employee of any member of your Group, potential debt finance providers and advisers who need to know it strictly for the purposes of considering, evaluating or advising on the Proposed Acquisition (your "**Permitted Recipients**") and except as permitted by the terms of this letter.

2.2 You will not use the Confidential Information for any purpose other than considering, evaluating or advising on the Proposed Acquisition and, in particular, you will not use the Confidential Information for any competitive or alternative purpose.

2.3 You will not base any behaviour in relation to qualifying investments or relevant products (as defined in the Financial Services and Markets Act 2000 ("**FSMA**") and the Code of Market Conduct made pursuant to FSMA) on the Confidential Information where such behaviour would amount to market abuse for the purposes of FSMA.

- 2.4 You will keep all documentation and other papers and all discs, tapes and other media recording or storing the Confidential Information secure and in such a way so as to prevent unauthorised access by any third party. In particular, you will restrict access to the Confidential Information to your Permitted Recipients. You will immediately notify Target if you become aware that the Confidential Information has been communicated or disclosed to an unauthorised third party.
- 2.5 Your obligations of confidentiality in this letter shall not apply to Confidential Information (or such of it) which:
- 2.5.1 is publicly known at the time of its disclosure to you; or
  - 2.5.2 becomes publicly known following its disclosure to you (other than as a result of disclosure by you or any other person contrary to the terms of this letter); or
  - 2.5.3 is already properly and lawfully in your possession prior to its disclosure to you (as evidenced by your written records) free of any restriction as to its use or disclosure prior to its being so disclosed.
- 2.6 You will ensure that any of your Permitted Recipients to whom Confidential Information is to be made available are made fully aware of your obligations to us under this letter and you will ensure that such Permitted Recipients observe the terms of this letter.
- 2.7 You acknowledge that some or all of the Confidential Information may be inside information for the purposes of the Criminal Justice Act 1993 ("CJA") and you should not deal in securities that are price-affected securities (as defined in CJA), encourage another person to deal in securities that are price affected securities or disclose inside information other than as permitted by the CJA until such information is made public.
- 2.8 You will not seek Confidential Information from, or discuss Confidential Information with, the Target or any representatives of the Target or the Targets' Group or any of their respective advisers, customers or suppliers without the prior consent of NM Rothschild & Sons Limited ("**Rothschild**").

### **3. Announcements and Permitted Disclosure**

- 3.1 Subject to paragraph 3.2, you will not make, or permit or procure to be made or solicit or assist any person to make, any announcement of the Proposed Acquisition without Target's prior written consent (which may be given on such terms as Target considers appropriate).
- 3.2 If you are required by law, or, to the extent relevant, the regulations of any stock exchange or listing authority or the Code or any other governmental or regulatory organisation to disclose any Confidential Information, you will, so far as it is lawful and practicable to do so prior to any such disclosure, as soon as practicable, notify Target of such requirement so as to enable Target to contest such disclosure or otherwise comment on and agree the content and timing of such disclosure.
- 3.3 If you are unable to inform Target before you disclose any Confidential Information pursuant to **paragraph 3.2**, you shall (to the extent permitted by law) inform Target immediately after the disclosure of the full circumstances of the disclosure and information that has been disclosed.

### **4. Records and Return of Confidential Information**

- 4.1 You will keep a written record of the Confidential Information provided to you or any of your Permitted Recipients and of the location of such Confidential Information and of the persons holding such Confidential Information.
- 4.2 You will, and you will procure that any of your Permitted Recipients to whom you have disclosed Confidential Information will, at your expense, within 3 Business Days of receipt of a written demand from Target:
- 4.2.1 return or destroy all written Confidential Information provided to you or your Permitted Recipients (including all analyses, compilations, studies and other documents prepared by you or your Permitted Recipients which contain or otherwise reflect the Confidential

Information provided to you and your Permitted Recipients) without keeping any copies; and

4.2.2 delete or remove any Confidential Information from any computer, word processor or other similar device.

4.3 **Paragraph 4.2** shall not apply to:

4.3.1 Confidential Information that is required to be retained by you or your Permitted Recipients by law, including by stock exchange regulations or by governmental order, decree, regulation or rule;

4.3.2 Confidential Information which has been automatically backed-up on your computer systems or the computer systems of your Permitted Recipients. To the extent that such computer back-up procedures create copies of the Confidential Information, you (or your Permitted Recipients), as appropriate, may retain only such copies for the period backed-up computer records are archived; and

4.3.3 any secondary data, such as corporate documents which contain data or information derived from the Confidential Information which is contained or reflected in material presented to it or any of its affiliates' executive board(s) (or the equivalent thereof), provided always that any such retained Confidential Information shall at all times remain subject to the confidentiality obligations contained in this letter,

provided that the provisions of this letter shall continue to apply to any Confidential Information retained in accordance with this **paragraph 4.3** and this paragraph shall survive termination of this letter.

4.4 The Confidential Information provided to you or your Permitted Recipients will remain the property of Target and its disclosure will not confer upon you any rights (including any intellectual property rights) over such Confidential Information.

## 5. **Non-Solicitation of Employees and Customers**

5.1 You will not (whether alone or in conjunction with, or on behalf of, another person and whether, directly or indirectly), either whilst negotiations on the Proposed Acquisition are taking place or for a period of one year from the date that negotiations cease, solicit or entice away, or endeavour to solicit or entice away, from Target or any member of Target's Group, or employ, any person employed in a managerial, supervisory, technical or sales capacity by, or who is a consultant to, Target or any member of Target's Group where the person in question either has Confidential Information or would be in a position to exploit Target's or its Group's trade connections.

5.2 The placing of an advertisement of a post available to a member of the public generally and the recruitment of a person through an employment agency shall not constitute a breach of **paragraph 5.1** provided that no company in your Group or any of your respective officers and employees encourages or advises such an agency to approach any such person referred to in **paragraph 5.1**.

5.3 You will not (whether alone or in conjunction with, or on behalf of, another person and whether, directly or indirectly), either whilst negotiations on the Proposed Acquisition are taking place or for a period of one year from the date that negotiations cease, deal with, or seek the custom of, any person who is or was identified by Target (or Rothschild on behalf of Target) as a "material" customer of Target or any member of Target's Group (a "Relevant Customer"), if the type of goods or services in respect of which the Relevant Customer is solicited were supplied to the Relevant Customer by Target or another member of Target's Group in the 12 months before the date of this letter or during negotiations in respect of the Proposed Transaction, unless:

5.3.1 at the date of this letter, you already had a business relationship with the Relevant Customer; or

5.3.2 you would have chosen to deal with or seek the custom of the Relevant Customer in the ordinary course of business in any event had you not entered into discussions and negotiations in respect of the Proposed Acquisition,

and provided, in each case, that you deal with, or seek the custom of, the Relevant Customer without using any Confidential Information to your advantage.

## 6. Restrictions on acquisition of further interests

6.1 Save in respect of the implementation of a recommended offer and without prejudice to any obligations you may have at law or under the Code, you will not, and will procure that none of your Permitted Recipients nor any member of your Group will, whether alone or acting in concert (as defined in the Code) with others, without the prior written consent of Target:

6.1.1 for a period of one year from the date of this letter:

- 6.1.1.1 in any manner acquire, announce an intention to acquire or enter into any agreement, arrangement or undertaking (whether or not legally binding) to acquire, or procure or induce any other person to acquire, announce an intention to acquire or enter into any agreement, arrangement or undertaking (whether or not legally binding) to acquire, or do or omit to do any act as a result of which it or any person will or is likely to acquire, any interest in securities (as defined by the Code) of Target;
- 6.1.1.2 make any offer for all or part of the share capital of Target;
- 6.1.1.3 announce, or take (or omit to take) any action which under the Code would require the announcement of, any proposals for any takeover, merger, consolidation or share exchange or similar transaction involving the shares of Target;
- 6.1.1.4 make or in any way participate, directly or indirectly, in any solicitation of proxies or votes, or any attempt to influence votes, from or by any holder of voting shares or other securities in Target in connection with any vote on any matters submitted or proposed to be submitted to a vote of holders of voting shares or other securities in Target;
- 6.1.1.5 make an approach to enter into discussions with, or otherwise communicate with any of the Target's shareholders, providers of finance, customers or suppliers in relation, directly or indirectly, to the Proposed Acquisition;
- 6.1.1.6 otherwise act to seek to control or influence the management, board of directors, shareholders or policies or affairs of Target or any member of Target's Group;
- 6.1.1.7 requisition or induce or attempt to induce any other person to requisition any general meeting of Target or circulate any proposals to shareholders of Target;
- 6.1.1.8 enter into any agreement, understanding or arrangement (whether or not legally binding) with any person with respect to the holding, voting or disposition of any securities of Target;
- 6.1.1.9 seek election to, or seek to place a representative on, the board of directors of Target or seek a renewal of any member of the board of directors of Target; and

6.1.2 you otherwise hereby agree at all times to respect the operation of the process in respect of the Proposed Acquisition including if and when your involvement in such process has ceased.

## 7. Principal

You confirm that you are acting as principal for your own account and not as nominee, agent or broker for any other person and that you will be responsible for any costs incurred by you or your advisers in

connection with the Proposed Acquisition and/or the consideration and evaluation of the Confidential Information.

## 8. No Offer or Licence

You accept that:

- 8.1 neither the Confidential Information nor anything else in this letter will constitute an offer by or on behalf of Target and that we may terminate negotiations with and withhold further Confidential Information from you at any time without giving any reason and that Target will not be under any obligation to recommend any offer or proposal which may be made by you or on your behalf; and
- 8.2 the disclosure to you of any Confidential Information will not give you any licence or other rights whatsoever in respect of any part of such Confidential Information beyond any rights granted expressly under the terms of this letter.

## 9. Duration

The obligations set out in this letter will survive the termination of any discussions or negotiations between you and Target regarding the Proposed Acquisition and will continue in full force and effect for a period of two years after the date of this letter (with the exception of par **paragraph 5** (Non-solicitation of Employees) which will remain effective for the time period set out in **paragraph 5**), provided that if you complete the Proposed Acquisition then the obligations contained in this letter shall not apply to the extent that the Confidential Information relates solely to Target or a member of the Target's Group.

## 10. Representations and Loss

- 10.1 None of the Confidential Information has been subject to verification and neither Target nor any member of its Group nor any of their directors or advisers accepts responsibility for or makes any representation, expressed or implied, or gives any warranty with respect to the accuracy or completeness of the Confidential Information and neither the Target nor any member of its Group nor any of their directors or advisers shall be under any obligation to update or correct any Confidential Information.
- 10.2 You will be responsible for making your own decision on the Confidential Information and you acknowledge that you will have no right of action (except in cases of fraud) against Target or any member of its Group or any of their directors or advisers in relation to the accuracy, reasonableness or completeness of any of the Confidential Information. Accordingly, Target and each member of its Group and their directors or advisers will not (except in cases of fraud) be liable for any direct, indirect or consequential loss or damage suffered by any person as a result of any use of, or reliance on any statement contained in, or omitted from, the Confidential Information.

## 11. Remedies and Adequacy of Damages

- 11.1 A delay in exercising or failure to exercise a right or remedy under or in connection with this letter will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy.
- 11.2 Without prejudice to any other rights and remedies that Target may have, you acknowledge and agree that the Confidential Information is valuable and that damages would not be an adequate remedy for any breach by you or any of the persons to whom you have disclosed Confidential Information or finance providers of the terms of this letter. Accordingly, Target will be entitled, without having to prove special damage, to seek equitable relief (including injunction and specific performance) for any breach or threatened breach by you of the terms of this letter and no proof of special damages will be necessary to enforce this letter.

## 12. Assignment

- 12.1 You agree that the rights of Target under this letter may be assigned or transferred, in whole or in part, to any third party which may acquire a direct interest in Target and that such party may enforce

this letter to the same extent and in the same manner as Target can enforce it. Accordingly, the terms of this letter will be binding and enure for the benefit of, and be enforceable by, Target's successors and assigns and references to Target will be construed accordingly.

12.2 Except as provided in **paragraph 12.1**, no person may assign, transfer, charge, hold on trust for any pension or deal in any other manner with any of its rights under this letter.

13. **Third Party Rights**

Each member of Target's Group, and the directors and advisers of Target and each such member, has the right to enforce the terms of this letter in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Save as provided in this paragraph, the parties to this letter do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

14. **Variation**

No variation of this letter will be effective unless in writing and signed by or on behalf of Target and you but no variation will require the consent of any of the third parties referred to in **paragraph 13**.

15. **Severability**

Each of the undertakings set out in this letter is separate and severable. Accordingly, if any court or body or authority of competent political jurisdiction finds any such undertakings or part of an undertaking to be illegal, unlawful, void or unenforceable this shall not affect the remaining part of the undertakings which will continue in full force and effect.

16. **Notices**

Any notice, claim or demand in connection with this letter shall be given in writing to the relevant party at the address stated in this letter (or such other address as it shall previously have notified to the other party). Any notice sent by fax shall be deemed received when sent, any notice sent by hand shall be deemed received when delivered and any notice sent by first class post within the United Kingdom shall be deemed received 48 hours after posting.

17. **Entire Agreement**

17.1 This letter constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

17.2 neither party has entered into this letter in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in this letter;

17.3 the only remedies available for breach of any representation or statement which was made prior to entry into this letter and which is expressly set out in this letter shall be for breach of contract; and

17.4 nothing in this **paragraph 17** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

18. **Governing Law and Jurisdiction**

18.1 This letter and any non-contractual obligations arising out of or in connection with it will be governed by English law.

18.2 Subject to **paragraph 18.3** the courts of England and Wales will have exclusive jurisdiction to determine any dispute arising out of or in connection with this letter (including in relation to any non-contractual obligations).

18.3 The agreement contained in **paragraph 18.2** is included for the benefit of the Target only. Target retains the right to bring proceedings in any other court of competent jurisdiction and concurrently in more than one jurisdiction.

18.4 You waive any objection to, agree to submit to the jurisdiction of any court referred to in this paragraph 18 and agree that a judgment or order of any such court is binding on you and may be enforced against you in the courts of any other jurisdiction.

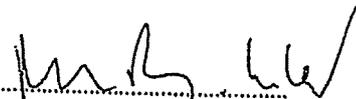
If you accept and agree the terms of this letter, please acknowledge such acceptance and agreement by signing and returning to Target the enclosed copy of this letter.

Yours faithfully



For and on behalf of **Sutton Harbour Holdings plc**

I accept and agree to the terms of your letter dated 9 August 2017 of which a copy is set out above.

  
.....  
Phillip H. Beinhaker  
.....  
Albert D. Friedberg