

Strictly private & confidential

CONFIDENTIALITY LETTER

To: Hotel Chocolat Group plc (*Hotel Chocolat*)
Mint House
Newark Close
Royston
Hertfordshire
United Kingdom
SG8 5HL

16 October 2023

Dear Sir/Madam

Mars / Hotel Chocolat – confidentiality letter

Each of Mars, Incorporated (*Mars*) and Hotel Chocolat (each a *party* and together, the *parties*) wishes to discuss Mars, or an affiliate thereof, potentially making an offer (to be implemented by way of a scheme of arrangement or a takeover offer) to acquire the entire issued share capital of Hotel Chocolat (the *Potential Transaction*).

In consideration of the mutual disclosure of certain Confidential Information in connection with the Potential Transaction each of the parties undertakes to the other in the terms of this letter.

Duty of confidentiality

1. Unless expressly consented to in writing by the other party, each party shall, and shall procure that each of its Recipients shall: (a) hold the Confidential Information in strict confidence; (b) use the Confidential Information only in connection with considering, evaluating, negotiating, implementing or advising such party or its Affiliates on the Potential Transaction (the *Purpose*); and (c) not disclose or distribute (or allow any other person to do the same) any of the Confidential Information, except as permitted by this letter. Save to the extent of any legal requirements to the contrary, the receiving party shall, as soon as reasonably practicable, notify the other party if the receiving party becomes aware that the Confidential Information has been communicated or disclosed to any unauthorised third party in breach of this letter, solely for the purpose of mitigating damages, and provided that the parties acknowledge that no notification made under this clause shall in anyway be construed as an admission of wrongdoing, liability or breach by any person.

2. The undertakings in clause 1 shall not apply to information which: (a) at the time of supply is in the public domain; (b) subsequently comes into the public domain otherwise than as a result of a breach of this letter; (c) the receiving party can establish to the other's reasonable satisfaction is already in its lawful possession or that of any of its Connected Persons and free from any obligation of secrecy or confidence; (d) the receiving party can establish to the other's reasonable satisfaction subsequently comes lawfully into the receiving party's possession or that of any of its Connected Persons from a source other than the other party or any of its Connected Persons and which source does not owe the other party or any of its Connected Persons any obligation of confidentiality in relation to it; (e) is independently developed by one party or its Connected Persons without use or reliance on Confidential Information, as demonstrated by the relevant party's written records; or (f) the parties or their Connected Persons agree in writing is not Confidential Information, except that sub-clauses 2(c) to 2(e)

above shall not apply in relation to Confidential Information falling within paragraph (b) of that definition.

Permitted disclosure

3. Each party, or any of its Authorised Recipients, may disclose Confidential Information: (a) subject to clause 4, to that party's Authorised Recipients; and (b) to the extent such person is required to do so by applicable law or regulation or required to do so by an order of a court of competent jurisdiction, any competent governmental, judicial or regulatory authority or body, or any relevant stock exchange on which such person's securities are admitted to trading, provided that a party which considers that a disclosure is required by it or its Authorised Recipients under clause 3(b) shall, to the extent permitted by applicable law and regulation (i) notify the other party of the requirement to disclose as soon as possible, and (ii) to the extent practicable, consult with the other party as to the timing, content and form of the disclosure.

4. Each party shall procure that each of its Recipients (a) is aware that the Confidential Information is confidential and of the terms of this letter and (b) complies with the terms of this letter as if it were a party to it. The obligations in this letter are given by each party on its own behalf and as agent for each of its Recipients.

5. For the avoidance of doubt nothing in this letter shall prevent Hotel Chocolat from making a public announcement in relation to any of the matters referred to in paragraph (b) of the definition of Confidential Information or from making any public announcement as referred to in Rule 2.3(d) of the Code.

Data protection

6. In this letter the terms *controller*, *processor*, *data subject*, *personal data* and *processing* shall have the meaning given to those terms or any similar terms in Data Protection Laws, and *process* and *processed* shall be construed accordingly.

7. The parties shall each be separate, independent controllers in respect of any Disclosed Personal Data.

8. Each party undertakes, and will procure that each of its Connected Persons undertakes, in relation to the Disclosed Personal Data:

- (a) to comply with all the obligations imposed on a controller under Data Protection Laws; and
- (b) to give reasonable assistance to the disclosing party in complying with all applicable requirements of Data Protection Laws.

9. Neither party shall transfer any of the other party's Disclosed Personal Data to any territory outside the UK or the European Economic Area (*EEA*) other than in accordance with applicable law, and each party shall provide reasonable assistance to the other in that regard.

Return or destruction of Confidential Information

10. If either party so requests the other party in writing, the other party and its Recipients shall promptly return or destroy (at the other party's election) all Confidential Information falling within paragraph (a) of that definition (including but not limited to any analyses, reports or documents which contain or reflect, or are derived or generated from, any such information), provided that: (a) the other party may retain any Confidential Information contained in any

board papers or minutes; (b) the other party and its Recipients shall only be required to take all reasonable steps to expunge or erase Confidential Information from any computer or other electronic device; and (c) the other party and its Recipients will each be permitted to retain copies of 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, provided, in each case, that this letter shall continue to apply to any Confidential Information retained in accordance with this clause 10.

11. Each party will, if the other party so requests in writing, confirm in writing to the other party that clause 10 has been complied with. Each party agrees that the Confidential Information shall remain the property of the disclosing party and its disclosure shall not confer upon the receiving party any rights (including any intellectual property rights) over the Confidential Information.

No representation or warranty

12. Each party will be responsible for making its own evaluation of and, if applicable, decision on the Confidential Information. Each party understands that the Confidential Information does not purport to be all inclusive and that no representation or warranty is made by or on behalf of the other party or any of its Connected Persons (or shall be implied) as to the accuracy, reliability, completeness or reasonableness of the Confidential Information, or as to the lawfulness of the transfer of any disclosed personal data to or processing of any disclosed personal data by the receiving party or any of its Recipients.

13. Accordingly, each party agrees with the other party on its own behalf and on behalf of each of its Connected Persons that neither party nor any of its Connected Persons will: (a) have any liability to the other party or any other person resulting from the use of Confidential Information by the other party or any of its Connected Persons or any other person in accordance with this letter; or (b) 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 Potential Transaction. This clause 13 does not exclude or limit any liability for, or remedy in respect of, fraudulent misrepresentation.

14. Each party agrees that neither party nor any of its Connected Persons owes any duty of care to the other party, the other party's Connected Persons or any other person, and each party and its Recipients agree and acknowledge that no person other than the parties has any authority to make or give any statement, warranty, representation or undertaking on behalf of the parties or any of their respective Connected Persons (as the case may be) in connection with the Potential Transaction.

Authorised contacts / non-solicit

15. Each party agrees that it and its Recipients shall not, directly or indirectly, make or have any contact with any officer, manager or employee of the other party or any of the other party's Affiliates in connection with the Potential Transaction or the Confidential Information, other than such persons identified by the other party for this purpose.

16. Each party will not, and will procure that none of its Affiliates will, directly or indirectly, for a period of 12 months from the date of this letter, without the prior written consent of the other party, employ or offer to employ, or solicit for employment or endeavour to entice away, any Relevant Person with whom such party or any of its Affiliates have contact or discussions (in each case whether in person, virtually or otherwise) at or in connection with the Potential Transaction, provided that this clause 16 shall not prohibit an offer to employ, or

the employment of, any Relevant Person who contacts such party or its Affiliates (a) solely on their own initiative, or (b) in response to the placing of an advertisement of a post available to members of the public generally that is not directed at officers, managers or employees of the other party or its Affiliates. For the purpose of this clause, a **Relevant Person** shall mean an individual who is at any time in the period of 12 months from the date of this letter an officer of, or an employee holding an executive, vice president, or other management position with, the other party or any of its Affiliates (including but not limited to, for the avoidance of doubt, any manager of a site of the other party or any of its Affiliates).

17. Nothing in this letter (including for the avoidance of doubt clauses 11, 12 and 18) shall prevent or otherwise restrict any discussions, negotiations, arrangements or agreements between Mars and its Connected Persons (on the one hand) and any shareholders as may be agreed with Hotel Chocolat and such shareholders' Connected Persons (on the other hand) in relation to any potential partial share alternative to be offered by Mars or its Affiliates in connection with the Potential Transaction, provided such discussions, negotiations, arrangements or agreements are in accordance with the Code.

Standstill

18. Mars agrees and undertakes that, without the prior written consent of Hotel Chocolat, for a period of 12 months from the date of this letter, Mars will not, and will ensure that none of its group undertakings will, directly or indirectly and whether alone or acting in concert with any other person:

- (a) acquire or offer to acquire, or cause or encourage any other person to acquire or offer to acquire, any interest in any shares or other securities of Hotel Chocolat 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 Hotel Chocolat;
- (b) announce or make, or cause any other person to announce or make, an offer to acquire Hotel Chocolat or announce that Mars, any of its group undertakings or any other person, is interested in acquiring Hotel Chocolat;
- (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 Hotel Chocolat;
- (d) (other than in relation to Mars' connected advisers) 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 Hotel Chocolat to be made or announced by that other person or any of its group undertakings;
- (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 Hotel Chocolat;
- (f) initiate or engage in or have any contact of any kind whatsoever in connection with the Potential Transaction with any shareholder of Hotel Chocolat;
- (g) initiate, make or otherwise participate in any solicitation of proxies to vote or other rights to vote any publicly listed shares of Hotel Chocolat; or

(h) seek, or take any steps (or requisition, solicit or induce or attempt to induce any other person) to vote in a particular manner at any meeting of the shareholders of Hotel Chocolat or to requisition any general meeting of shareholders of Hotel Chocolat.

19. The restrictions in clause 18 and related restrictions in this letter on disclosure of information falling within paragraph (b) of the definition of Confidential information shall cease to apply if:

(a) Mars or any of its Affiliates announces an offer under Rule 2.7 of the Code to acquire all or part (being 30 per cent or more) of the issued and to be issued share capital of Hotel Chocolat which is recommended by the Directors of Hotel Chocolat (or, if applicable, a committee thereof);

(b) a third party which is not acting in concert with Mars announces an offer under Rule 2.7 of the Code to acquire all or part (being 30 per cent or more) of the issued and to be issued share capital of Hotel Chocolat (whether such offer is recommended or not);

(c) Hotel Chocolat or any of its group undertakings enters into, or announces that it is proposing to enter into, a reverse takeover or Rule 9 waiver proposal (each as referred to in the Code);

(d) any person (other than Mars, its Affiliates or any other acting in concert with Mars) acquires, or announces an intention to acquire, all or substantially all of the undertakings, assets or business of Hotel Chocolat or enters into any other arrangement which, if completed, would be reasonably likely to preclude the Potential Transaction; or

(e) any person (or persons acting in concert) not acting in concert with Mars acquire(s) interests in shares equal to or greater than, in aggregate, (a) ten per cent., or (b) if such person(s) already hold voting rights in Hotel Chocolat as at the date of this letter, five per cent. (excluding those voting rights already held by such person at the date of this letter), in each case of the aggregate voting rights of Hotel Chocolat.

20. The restrictions contained in clause 18 shall not:

(a) apply to the acquisition by any pension fund of Mars or its Affiliates of shares in Hotel Chocolat provided that the assets of the pension fund are managed under an agreement or arrangement with a third party which gives such third party absolute discretion regarding dealing, voting and acceptance decisions relating to the fund;

(b) prevent the acquisition of (or other dealings in) any interest in shares or other securities of Hotel Chocolat by any connected fund manager or principal trader (as defined in the Code);

(c) restrict or prohibit any of the actions described in clause 17 of this letter;

(d) prevent any of Mars' advisers from undertaking activities in the ordinary course of an engagement by a third party which is not acting in concert with Mars in relation to the Potential Transaction; or

(e) prevent any announcement required by the Panel on Takeovers and Mergers to be made under Rule 2.2 of the Code or any disclosure or announcement to be made pursuant to clause 3(b) of this letter.

Restrictions on share dealings

21. Each of the parties recognises and accepts, and will advise its Authorised Recipients who have received Confidential Information, that the Confidential Information is given and any negotiations are taking place in confidence, and that the Potential 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 of UK domestic law by virtue of the European Union (Withdrawal) Act 2018) (*UK MAR*) and neither party nor any of its Authorised Recipients should:

- (a) deal in securities that are price-affected securities (as defined in the CJA) in relation to the inside information, encourage another person to deal in price-affected securities or disclose the 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).

General

22. In this letter:

acting in concert shall be construed in accordance with the Code, and *act in concert* shall be construed accordingly;

Affiliate means, in relation to a party, any of its group undertakings (as such term is defined in section 1161 of the Companies Act 2006) from time to time;

Authorised Recipients means, in relation to a party, such party's Connected Persons who reasonably needs access to Confidential Information for the Purpose;

Confidential Information means, in relation to a party: (a) all information (in whatever form) supplied by or on behalf of the other party or any of its Connected Persons to that party or any of its Connected Persons, before, on or after the date of this letter, in connection with the Transaction or otherwise related to the other party or any of its Affiliates, together with any analyses, reports or documents which contain or reflect, or are derived or generated from, any such information; and (b) the existence, status, content and outcome of the Potential Transaction and any discussions between the parties regarding the Potential Transaction, and the existence and contents of this letter;

Code means the City Code on Takeovers and Mergers, as amended from time to time;

Connected Persons means, in relation to a party: (a) each of its Affiliates; and (b) each of its and its Affiliates' directors, officers, employees, agents, representatives, consultants and advisers (and any directors, officers, employees and partners of any such advisers, agents and representatives);

Data Protection Laws 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) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including to the extent applicable the GDPR, the UK Data Protection Act 2018 (*DPA*), and the UK GDPR;

Directors means the directors of Hotel Chocolat from time to time;

Disclosed Personal Data means any personal data supplied by or on behalf of either party or any of its Connected Persons, whenever and in whatever form, to the other party or any of its Connected Persons in connection with the Potential Transaction;

GDPR means:

- (a) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; and
- (b) laws implementing Regulation 2016/679 or any successor laws arising out of the withdrawal of a member state from the European Union;

group undertakings shall be construed in accordance with section 1161 of the Companies Act 2006; and

interest in shares or securities shall be construed in accordance with the Code.

Recipients means, in relation to a party, such party's Authorised Recipients and any other person to whom that party or any of its Authorised Recipients directly or indirectly disclose Confidential Information (but in each case excluding, for the avoidance of doubt, the other party and its Connected Persons).

23. Except as expressly set out in this letter, the obligations in this letter shall remain in effect until the date falling two years after the date of this letter. Each party agrees that the obligations set out in this letter will survive completion and/or termination of the Potential Transaction, whether or not discussions continue between the parties regarding the Potential Transaction or otherwise. Each party further agrees that neither the Confidential Information nor anything else in this letter shall constitute an offer or invitation to the other party.

24. Without affecting any other rights or remedies that each of the parties may have, each of the parties acknowledges that a person with rights under this letter may be irreparably harmed by any breach of its terms and that damages alone may not necessarily be an adequate remedy. Accordingly, a person bringing a claim under this letter will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of its terms.

25. No failure or delay by either party in exercising any right or remedy under this letter shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall prevent any further exercise of it or the exercise of any other remedy. The rights and remedies of the parties under this letter are cumulative and not exclusive of any rights or remedies provided by law.

26. If any provision of this letter is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this letter, but without invalidating any of the remaining provisions.

27. This letter may be terminated or varied in any way and at any time as agreed in writing between the parties.

28. Each of the parties' respective Connected Persons shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this letter (as amended from time to time), subject to and in accordance with the terms of clauses 31 and 32. Notwithstanding this clause, this letter may be terminated or varied in accordance with clause 27 without the consent of either party's Connected Persons.

29. Save as provided in clause 28, 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.

30. 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.

31. This letter and any non-contractual obligations arising out of or in connection with this letter, the relationship between the parties and the conduct of any discussions regarding the Potential Transaction shall be governed by, and construed in accordance with, English law.

32. The English courts shall have exclusive jurisdiction in relation to all disputes (including, without limitation, claims for set-off and counterclaims) arising out of or in connection with this letter including, without limitation disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, termination or the legal relationships established by, this letter; and (ii) any non-contractual obligations arising out of or in connection with this letter. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgment delivered by an English court exercising jurisdiction pursuant to this clause.

Please confirm your agreement by signing and returning to us a copy of this letter.

Yours faithfully

By.. 

for and on behalf of
Mars, Incorporated

AGREED AND ACCEPTED



By.. [redacted]
for and on behalf of
Hotel Chocolat Group plc

Dated 16 October 2023