

**Dated**

4 September

**2023**

**Confidentiality Agreement**

muckle<sup>LLP</sup>

Muckle LLP  
Time Central  
32 Gallowgate  
Newcastle upon Tyne  
NE1 4BF

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**Parties**

- (1) **The Lakes Distillery Company plc**, incorporated and registered in England and Wales with company number 07769363 whose registered office is at 1st Floor Offices Grandstand Garage, Kenton Road, Gosforth, Newcastle Upon Tyne, NE3 4NB (**Company**);
- (2) **Highland Jersey Limited**, incorporated and registered in Jersey with company number 127249 whose registered office is at CTV House, La Pouquelaye, St Helier, Jersey, JE2 3TP (**Bidder**).

**Background**

- (A) The parties intend to enter into discussions relating to the Proposed Transaction, which will involve the disclosure of Confidential Information by the Company to the Bidder.
- (B) The Company and each member of its Group wish to ensure that any Confidential Information disclosed to the Bidder in connection with the Proposed Transaction remains confidential and is not used by the Bidder for any purpose other than the Permitted Purpose.
- (C) The parties have agreed to comply with this Agreement in connection with the use and disclosure of the Confidential Information.

**It is agreed**

1. **Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**acting in concert** has the meaning given in the Code and "concert party" means any person who is acting in concert.

**Business** the business, assets and undertaking of the Company and its Group.

**Business Day** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Code** the City Code on Takeovers and Mergers.

**Company Permitted Recipient** any person referred to in clause 8.2 to whom the Bidder's interest in the Proposed Transaction is disclosed by the Company.

<b>Confidential Information</b>	has the meaning given in clause 2.1.
<b>Copies</b>	copies of Confidential Information including any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing, recording or recalling information which contains, reflects or is derived or generated from, any Confidential Information.
<b>Group</b>	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a <b>member of the Group</b> .
<b>Key Employee</b>	any individual who is, at any time during the negotiations relating to the Proposed Transaction, an employee holding an executive or managerial position with, or an officer of, the Company or any member of its Group.
<b>Offer</b>	has the meaning given in the Code.
<b>Panel</b>	The Panel on Takeovers and Mergers.
<b>Permitted Purpose</b>	investigating the Business in connection with considering, evaluating, negotiating or advancing the Proposed Transaction.
<b>Permitted Recipient</b>	any person referred to in clause 4.1 to whom Confidential Information is disclosed by, or at the request of, the Bidder.
<b>Proposed Transaction</b>	the potential offer and acquisition by the Bidder or any member of its Group for the entire issued share capital of the Company to be implemented in accordance with the requirements of the Code (subject to any exemptions or waivers granted by the Panel).

**Restricted Period**

the period commencing on the date of this Agreement and ending on the earlier of the:

- (a) termination of this Agreement in accordance with clause 12.1; and
- (b) date being six months after the date of this Agreement.

- 1.2 Clause headings do not affect the interpretation of this Agreement.
- 1.3 References to clauses are to the clauses of this Agreement.
- 1.4 A reference to **this Agreement** or any other agreement or document referred to in this Agreement, is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective successors and permitted assigns, and references to any **party** shall include that party's successors and permitted assigns.
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006.
- 1.9 Unless expressly provided otherwise in this Agreement, a reference to **writing** or **written** excludes fax but not email.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11 Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:
  - 1.11.1 is a reference to it as amended, extended or re-enacted from time to time;
  - 1.11.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. **Confidential Information**

2.1 In this Agreement, **Confidential Information** means all confidential or proprietary information (however recorded or preserved) that is disclosed or made available (in any form or medium), directly or indirectly, by the Company or any member of its Group (or any of their respective employees, officers, agents or advisers) to the Bidder or a member of its Group) (or any of their respective employees, officers, agents or advisers) whether before, on or after the date of this Agreement, in connection with the Proposed Transaction, including:

2.1.1 the fact that discussions are taking (or have taken) place concerning the Proposed Transaction;

2.1.2 the existence and contents of this Agreement;

2.1.3 all confidential or proprietary information relating to the Business or the affairs, financial or trading position, assets, intellectual property rights, customers, clients, suppliers, employees, plans, operations, processes, products, intentions or market opportunities of the Company or any member of its Group;

2.1.4 the know-how, designs, recipes, trade secrets, technical information or software of the Company or any member of its Group;

2.1.5 any other information that is identified on its face as being of a confidential or proprietary nature; and

2.1.6 any findings, data or analysis derived from such information, but excluding any information referred to in clause 2.2.

2.2 Information is not Confidential Information if:

2.2.1 it has been made public by the Company;

2.2.2 it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Bidder or any other person in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);

- 2.2.3 the Bidder can prove that it received the information from a source that is not connected with the Company or its Group and that such source was not under any obligation of confidence in respect of that information;
- 2.2.4 the Bidder can prove that the information was lawfully in its possession before it was disclosed by the Company or its Group (or on its behalf) and the Bidder was not under any obligation of confidence in respect of that information; or
- 2.2.5 the parties agree in writing that the information is not confidential.

### 3. **Bidder's obligations**

- 3.1 In return for the Company making Confidential Information available to the Bidder, the Bidder undertakes to the Company and each member of its Group that it shall:
  - 3.1.1 keep the Confidential Information secret and confidential;
  - 3.1.2 not use or exploit the Confidential Information in any way, except for the Permitted Purpose;
  - 3.1.3 not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with, the terms of this Agreement; and
  - 3.1.4 inform the Company immediately on becoming aware, or suspecting, that Confidential Information has been disclosed to, or otherwise obtained by, an unauthorised third party.

### 4. **Permitted disclosure**

- 4.1 Provided it complies with its obligations under clause 4.2, the Bidder may disclose Confidential Information to:
  - 4.1.1 those officers or employees of the Bidder's Group that need to know the relevant Confidential Information for the Permitted Purpose;
  - 4.1.2 the professional advisers or consultants engaged to advise the Bidder in connection with the Proposed Transaction;
  - 4.1.3 its bankers, potential investors or funders (and their respective professional advisers or consultants) for the purpose of securing financing for the Proposed Transaction; and

- 4.1.4 any person whom the Company agrees in writing may receive the relevant Confidential Information.
- 4.2 Where Confidential Information is disclosed to a Permitted Recipient, the Bidder shall:
  - 4.2.1 inform the Permitted Recipient of the confidential nature of the Confidential Information before it is disclosed;
  - 4.2.2 at all times, be responsible for each Permitted Recipient's compliance with the terms of this Agreement; and
  - 4.2.3 be liable for the actions or omissions of the Permitted Recipients and other members of its Group in relation to Confidential Information as if they were the Bidder's own actions or omissions.
- 5. **Mandatory disclosure**
  - 5.1 Subject to the provisions of this clause 5, the Bidder may disclose Confidential Information to the minimum extent required by:
    - 5.1.1 an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
    - 5.1.2 the rules of the Code or any requirement of the Panel; or
    - 5.1.3 the laws or regulations of any country to which the affairs of the Bidder or any member of its Group are subject.
  - 5.2 Before disclosing any Confidential Information under clause 5.1, the Bidder shall (to the extent permitted by law) use its best endeavours to:
    - 5.2.1 inform the Company of the full circumstances of the required disclosure and the Confidential Information that must be disclosed; and
    - 5.2.2 take such steps as may be reasonable and practicable in the circumstances to agree the contents of the required disclosure (including any public announcement) with the Company before it is made; and
    - 5.2.3 consult with the Company as to possible steps to avoid or limit the required disclosure.
  - 5.3 The Bidder shall co-operate with the Company (at the Company's cost and expense) if the Company decides to bring any legal or other proceedings to challenge the validity of a requirement to disclose Confidential Information pursuant to clause 5.1.



5.4 If the Bidder is unable to inform the Company before Confidential Information is disclosed pursuant to clause 5.1, the Bidder shall (to the extent permitted by law) inform the Company of the full circumstances of the disclosure and the information that has been disclosed immediately after such disclosure has been made.

6. **Authorised Contact**

6.1 All communications with the Company concerning the Proposed Transaction and the Permitted Purpose shall be addressed to:

6.1.1 James Pennefather, Chief Executive Officer;

6.1.2 David Robinson, Chief Financial Officer; and

6.1.3 Andrew Davison and Sarah Forster of Muckle LLP

(together **Authorised Contacts**) or with such other persons as the Company (or any of the aforementioned persons and organisations) shall from time to time notify to the Bidder.

6.2 Except with the prior written consent of the Company (and then, only in strict compliance with the terms of that consent), neither the Bidder nor anyone acting on its behalf, shall contact or communicate with any directors (save for the Authorised Contacts), officers, employees, consultants, advisers, landlords, bankers, customers, clients or suppliers of the Company or any member of its Group in connection with the Proposed Transaction.

6.3 All communications with the Bidder concerning the Proposed Transaction and the Permitted Purpose shall be addressed to:

6.3.1 Bidder: Eric Heerema and Hans Sleuwenhoek;

6.3.2 Gavin Orde and Rebecca Corker of Rothschild & Co; or

6.3.3 Tom Mercer and Harry Thimont of Ashurst LLP,

or with such other persons as the Bidder (or any of the aforementioned persons and organisations) shall from time to time notify to the Company.

7. **Return or destruction of Confidential Information**

7.1 If so requested by the Company at any time by notice in writing to the Bidder, the Bidder shall promptly:

7.1.1 destroy or return to the Company all documents and materials containing, reflecting, incorporating, or based on any Confidential Information, that have been supplied to or generated by the Bidder or any Permitted Recipient, including all Copies;

- 7.1.2 erase all Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form;
  - 7.1.3 to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
  - 7.1.4 procure that its Permitted Recipients take the steps referred to in clause 7.1.1 to clause 7.1.3 in relation to all Confidential Information in their possession.
- 7.2 Nothing in clause 7.1 shall require the Bidder to return or destroy (or procure the return or destruction of) any documents or materials containing, reflecting, incorporating, or based on Confidential Information that the Bidder or any Permitted Recipient is required to retain by applicable law, or to satisfy the requirements of any regulatory authority or body of competent jurisdiction or under the Code, to which such person is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Bidder pursuant to this clause 7.2.
- 7.3 The Bidder and each Permitted Recipient may retain any Confidential Information to the extent it is:
  - 7.3.1 required to do so by its bona fide regulatory compliance or audit policies and procedures; or
  - 7.3.2 contained in any electronic file created pursuant to any routine backup or archiving procedure so long as such file is not generally accessible beyond the need for disaster recovery or similar operations.
- 7.4 The provisions of this Agreement shall continue to apply to any documents and materials retained by the Bidder pursuant to clause 7.2.
- 8. **Company's obligations**
  - 8.1 Subject to clause 8.2, the Company undertakes that it shall (and shall procure that each member of its Group and each person to which information is disclosed in accordance with clause 8.2.1 to 8.2.4 shall) keep secret and confidential the Bidder's interest in the Proposed Transaction, the fact that discussions are taking (or have taken) place concerning the Proposed Transaction and the existence and contents of the Agreement, and shall take all reasonable precautions to ensure that such information remains confidential.

- 8.2 The Company may disclose the Bidder's interest in the Proposed Transaction to:
- 8.2.1 those directors, officers or employees of the Company and of its Group to the extent necessary for the Permitted Purpose;
  - 8.2.2 any professional advisers or consultants engaged to advise the Company in connection with the Proposed Transaction;
  - 8.2.3 the Company's bankers, investors or funders (and their respective professional advisers or consultants) to the extent necessary for the Permitted Purpose;
  - 8.2.4 any person whom the Bidder agrees in writing may receive the relevant information;
  - 8.2.5 the extent required by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction, or by the rules the Code or any requirement of the Panel; and
  - 8.2.6 the extent required by the laws or regulations of any country to which the affairs of the Company (or any member of its Group) are subject.

8.3 The Company will be liable for the actions or omissions of the Company Permitted Recipients in relation to the information in clause 8.1 that is disclosed as if they were the Company's own actions or omissions.

**9. Restrictions on the Bidder**

- 9.1 The Bidder undertakes to the Company and each member of the Company's Group, that except with the prior written consent of the Company, it shall not (and shall procure that no member of the Bidder's Group shall) at any time during the Restricted Period:
- 9.1.1 initiate or participate in any discussions, or have contact of any kind, with any director, officer or employee of the Company or any member of its Group other than the Authorised Contacts relating to the Proposed Transaction;
  - 9.1.2 employ or offer to employ, or enter into a contract for the services of a Key Employee, or procure or facilitate the making of any such offer by any other person;
  - 9.1.3 entice, solicit or procure any Key Employee to leave the employment of the Company or any member of its Group, or make any attempt to do so, whether or not the Key Employee would commit a breach of contract in leaving their employment;
  - 9.1.4 canvass, solicit or otherwise seek the custom of, or have any dealings with any person who is or who has been at any time during the period of 12 months immediately

preceding the date of this Agreement, a client or customer of the Company's Group who is not an existing client or customer of the Bidder (**Restricted Customer**), in relation to the supply of goods, products or services which are the same as or substantially similar to those supplied by the Company's Group; or

- 9.1.5 induce or attempt to induce a Restricted Customer to cease conducting, or to reduce the amount of business conducted with, or to vary adversely the terms upon which it conducts business with, any member of the Company's Group, or do any other thing which is reasonably likely to have such an effect.
- 9.2 The undertakings in clause 9.1 are intended for the benefit of, and shall be enforceable by, the Company and each member of its Group and apply to actions carried out by the Bidder or any member of the Bidder's Group in any capacity (including as shareholder, partner, director, principal, consultant, officer, agent or otherwise) and whether directly or indirectly, on its own behalf or on behalf of, or jointly with, any other person.
- 9.3 Each of the undertakings in clause 9.1:
- 9.3.1 is considered fair and reasonable by the parties;
- 9.3.2 is a separate undertaking by the Bidder; and
- 9.3.3 shall be enforceable separately and independently of any person's right to enforce any one or more of the other undertakings contained in that clause.
- 9.4 The placing of an advertisement of a post available to members of the public generally, the recruitment of a person through an employment agency or any person solely on his or her own initiative shall not constitute a breach of the Bidder's undertakings in clause 9.1, provided that neither the Bidder nor any member of its Group, or their respective officers or employees encourages or advises such agency to approach a Key Employee.
- 9.5 The Bidder and any Permitted Recipient may contact any Restricted Customer which is also an existing customer or client of the Bidder in the ordinary course of its existing business, but only if it does not refer in any way to the Proposed Transaction.
10. **Reservation of rights and Bidder's acknowledgement**
- 10.1 This Agreement and the supply of Confidential Information shall not constitute an offer, representation or warranty by the Company or any member of its Group to enter into the Proposed Transaction or any further agreement with the Bidder.

- 10.2 Nothing in this Agreement shall impose an obligation on either party to continue discussions or negotiations in connection with the Proposed Transaction, or an obligation on the Company, or any member of its Group to disclose any information to the Bidder (whether Confidential Information or otherwise).
- 10.3 All rights in the Confidential Information are reserved by the Company and none of the Confidential Information shall be the property of the Bidder. The disclosure of Confidential Information to the Bidder shall not give the Bidder or any other person any licence or other right whatsoever in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
- 10.4 The Bidder acknowledges that the Confidential Information may not be accurate or complete and neither the Company, nor any member of the Company's Group, nor their respective agents or advisers make any warranty or representation (whether express or implied) concerning the Confidential Information, or its accuracy or completeness. The Bidder acknowledges and agrees that it shall place no reliance on any Confidential Information (or any other information) provided to it and that it shall make its own evaluation of the Company and of the Proposed Transaction. Neither the Company nor any of its officers, employees, consultants or advisers shall have any liability to the Bidder or its directors, employees, consultants or advisers arising from the use of any Confidential Information (or any other information), save that nothing in this clause 10.4 shall have the effect of limiting or excluding any liability arising as a result of fraud.
- 10.5 Nothing in this Agreement shall:
- 10.5.1 oblige a party to pay any amount which the Panel determines would not be permitted by Rule 21.2 of the Code; or
  - 10.5.2 prevent the Company from making an announcement relating to a possible offer or publicly identifying a potential offeror at any time the Company's board considers appropriate.

**11. Inadequacy of damages**

Without prejudice to any other rights or remedies that the Company may have, the Bidder acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Bidder. Accordingly, the Company or any member of its Group shall be entitled to

the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

**12. Duration**

12.1 This Agreement shall terminate upon completion of the Proposed Transaction with the Bidder.

12.2 Save as provided in clause 12.1, this Agreement shall continue in full force and effect for a period of two years from the date of this Agreement. The parties' obligations under this Agreement shall not be affected by any termination of the negotiations or discussions between the Bidder and the Company in relation to the Proposed Transaction.

12.3 Termination of this Agreement shall not affect any accrued rights or remedies to which a party is entitled.

**13. Agency, assignment and other dealings**

13.1 The Bidder confirms that it is acting on its own behalf and not as a broker or agent, or otherwise for the benefit, of any other person.

13.2 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement save that the Company may assign its rights to any other company in its Group.

**14. Entire agreement**

14.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

14.3 Nothing in this clause 14 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

**15. Variation and waiver**

15.1 No variation of this Agreement shall be effective unless it is in writing and signed by all the parties (or their authorised representatives).

15.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

15.3 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**16. Costs**

Except as expressly provided in this Agreement (or otherwise agreed in writing by the parties), each party shall pay its own costs and expenses incurred in connection with the Proposed Transaction, including the negotiation, preparation and execution of this Agreement and the evaluation and review of the Confidential Information.

**17. Notices**

17.1 A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office addressed to its Chief Executive Officer and marked "Confidential";

17.2 Any notice shall be deemed to have been received:

17.2.1 if delivered by hand, at the time the notice is left at the proper address; or

17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

17.3 This clause 17 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**18. Severance**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

**19. Third party rights**

Except as expressly provided otherwise in this Agreement, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**20. Counterparts**

20.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

20.2 Each party agrees that this Agreement may be signed by electronic signature using DocuSign and that this method of signature is as conclusive of such party's intention to be bound by this Agreement as if signed by such party by manuscript signature.

**21. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Governing law and jurisdiction**

22.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

**Executed** on the date that appears on the front of this document.

**Signed by**

[Redacted signature]

[Redacted signature]

.....  
*(signature of authorised signatory)*

for and on behalf of

**The Lakes Distillery Company plc**

**Signed by**

.....

.....  
*(signature of authorised signatory)*

for and on behalf of

**Highland Jersey Limited**



**20. Counterparts**

20.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

20.2 Each party agrees that this Agreement may be signed by electronic signature using DocuSign and that this method of signature is as conclusive of such party's intention to be bound by this Agreement as if signed by such party by manuscript signature.

**21. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Governing law and jurisdiction**

22.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

**Executed** on the date that appears on the front of this document.

**Signed by**

.....

.....

*(signature of authorised signatory)*

for and on behalf of

**The Lakes Distillery Company plc**

**Signed by**

.....

.....  
*(signature of authorised signatory)*

for and on behalf of

**Highland Jersey Limited**