

MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (the "**Agreement**") is made on **31 March 2023**

BETWEEN:

- (1) **BASF SE**, a company incorporated in Germany and having its registered office at Carl-Bosch-Strasse 38, 67056 Ludwigshafen, Germany registered with the commercial register of Ludwigshafen am Rhein under registration number HRB 6000 ("**BASF**")
- (2) **L1 Energy (UK) LLP**, a limited liability partnership established in the United Kingdom and having its registered office at Devonshire House, One Mayfair Place, London W1J 8AJ, United Kingdom registered with Companies House under registration number OC386299 ("**L1**") and
- (3) **Harbour Energy plc** a company incorporated in Scotland and having its registered office at 4th Floor, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN , United Kingdom registered with Companies House under registration number SC234781 ("**Harbour**")

(BASF, L1 and Harbour hereinafter also referred to each individually as a "**Party**" and jointly as the "**Parties**")

WHEREAS, BASF and L1 Energy Capital Management Services S.a r.l., an Affiliate of L1, are (indirect or direct (as applicable)) shareholders of Wintershall Dea AG (hereinafter referred to as "**WD**") which, together with its Affiliates, is engaged in the exploration and production of oil and gas, the transportation and storage of gas including ancillary and administrative operations (hereinafter referred to as the "**WD Business**").

WHEREAS, Harbour is the largest UK listed independent oil and gas company (hereinafter referred to the "**Harbour Business**" and together with the WD Business the "**Businesses**").

WHEREAS, the Parties are interested in entering into discussions regarding a potential transaction involving the Businesses or parts thereof (the evaluation, discussions, negotiations and execution regarding such potential transaction hereinafter referred to as the "**Project**").

WHEREAS, in view of the Project, the Parties are willing to disclose to the other Parties information that they deem necessary or helpful to facilitate the assessment and evaluation of the Businesses and the Project.

WHEREAS, the Parties wish to ensure that the Confidential Information revealed to the other Parties in the course of the Project remains confidential and is not used for any purpose other than the Project (the "**Permitted Purpose**").

NOW, THEREFORE, in consideration of making such information available to the other Parties, each Party undertakes towards the other Parties and their respective Affiliates as follows:

1. DEFINITIONS

In this Agreement:

- 1.1 "**Affiliate**" means in relation to a Person any other Person from time to time that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with such Person. For this purpose, "**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management policies or



activities of a Person, whether through the ownership of shares or voting power, by contract or agency or otherwise.

1.2 **"Confidential Information"** means

1.2.1 all information of whatever nature relating to the Project or the Businesses which after the date of this Agreement has made available by or on behalf of a Party, its Affiliates or any of its Representatives whether in writing, in disk or electronic form, orally or pursuant to visits to premises and in any form or medium in which such information may be recorded or kept, including but not limited to financial statements, business plans, strategies, trade secrets and all financial, commercial, technical, operational, staff, management and other information, data and knowhow regarding the Businesses together with information regarding its products, services, assets, costs, terms of trading, customers, suppliers and employees;

1.2.2 all information, documents and records which from time to time are contained in any data room of information (in whatever form maintained) relating to the Parties, their Affiliates or the Businesses;

1.2.3 Derivative Information; and

1.2.4 the existence and contents of this Agreement and the existence and contents of discussions between the Parties about the Project.

1.3 **"Derivative Information"** means any analyses, compilations, studies and other material which contain, reflect or are otherwise generated from Confidential Information by the Parties or any of their Representatives.

1.4 **"Person"** means any individual, partnership, joint venture, corporation, company, trust, association, governmental authority or other entity.

1.5 **"Representatives"** means (i) in respect of a Person, its Affiliates and its and its Affiliates' directors, officers, employees, auditors, financial, legal and other advisers, agents, consultants, debt finance providers and (ii) other Persons and their Representatives which upon request of one Party have been agreed by the other Parties in writing may receive the Confidential Information.

2. **CONFIDENTIALITY UNDERTAKINGS**

2.1 Each Party shall:

2.1.1 keep the Confidential Information secret and confidential and not disclose any of it to any person other than to those of its respective Representatives who strictly require knowledge of the Confidential Information;

2.1.2 ensure that each of its respective Representatives has been made aware of this Agreement (save to the extent such Representatives are already subject to contractual, professional or regulatory requirements to maintain the confidentiality of the Confidential Information) and complies with its terms as if they were a party hereto. Accordingly, each Party shall be responsible for any breach of the provisions of this Agreement by any of its respective Representatives;



- 2.1.3 use the Confidential Information solely for the Permitted Purpose and not for any other purpose; and
 - 2.1.4 keep the Confidential Information and any copies thereof secure and in such a way as to prevent unauthorised access by any third party.
- 2.2 Each Party shall promptly notify the other Parties upon becoming aware that Confidential Information has been disclosed in breach of the terms of this Agreement.

3. **EXCEPTIONS TO THE CONFIDENTIALITY UNDERTAKINGS**

- 3.1 The confidentiality undertakings according to clause 2 shall not apply if and to the extent:
- 3.1.1 the Confidential Information is already in the public domain when it is first disclosed;
 - 3.1.2 the Confidential Information subsequently enters the public domain other than through a breach of any of the undertakings of this Agreement;
 - 3.1.3 when the Confidential Information was first disclosed it was already in the lawful possession of any of the other Parties or their Representatives free of any restriction as to its use or disclosure;
 - 3.1.4 information was independently developed by a Party or its Representatives without using of or referring to Confidential Information;
 - 3.1.5 the Confidential Information is required to be disclosed by applicable law or regulation, or by any competent judicial, governmental, supervisory or regulatory authority. If a Party reasonably determines such disclosure is necessary, it shall, as far as legally permissible only make the disclosure after consultation with the other Parties, taking into account their reasonable requirements as to form, timing, nature and extent of the disclosure. If the relevant Party is unable to consult with the other Parties before making such a disclosure, the relevant Party shall (i) inform the other Parties of the circumstances, timing, content and manner of the disclosure promptly after the disclosure is made; and (ii) inform any such authority of the confidential nature of the information disclosed to them and to keep such information confidential in accordance with such authority's policies or procedures. The aforementioned shall not apply to any disclosure made in the course of any routine regulatory or other audit not specifically targeting the Confidential Information as such.

4. **FURTHER SPECIFIC UNDERTAKINGS**

- 4.1 In consideration of receiving the Confidential Information it is further agreed that:
- 4.1.1 Harbour and its Affiliates shall for a period of one year following the date of this Agreement not in any way directly or indirectly solicit for employment or retention as a contractor, hire, retain, offer to hire or retain, entice away or offer to enter into any employment, consulting or similar contract with any employee of the WD Business unless the leaving of such employment or retention is the consequence of any of following activities: (i) soliciting, enticing or taking steps with respect to an employee whose employment with the relevant employer entity has been terminated prior to any such solicitation or enticement or steps; or (ii) making bona fide solicitations exclusively directed at the public in general in publications or through advertisements available to the public in general;



- 4.1.2 without the written consent of BASF and L1, neither Harbour nor its Representatives shall maintain, make or have any contact in relation to the Permitted Purpose with any person who is currently a customer, client, agent, employee, director, officer, contractor or sub-contractor of, or supplier to, WD or the WD Business or make enquiries of any of them in relation to the Permitted Purpose, in either case, whether directly or indirectly, provided, however, that nothing in this Agreement shall prevent Harbour or any of its Representatives from maintaining and making any contact with employees, directors, officers, suppliers or customers in the ordinary course of business (other than in relation to the Permitted Purpose) and provided that there is no reference to the Project, the Permitted Purpose or to the Confidential Information and no Confidential Information is disclosed; and
- 4.1.3 without the written consent of Harbour, neither BASF, nor L1 nor any of their Representatives shall maintain, make or have any contact in relation to the Permitted Purpose with any person who is currently a customer, client, agent, employee, director, officer, contractor or sub-contractor of, or supplier to, Harbour or the Harbour Business or make enquiries of any of them in relation to the Permitted Purpose, in either case, whether directly or indirectly, provided, however, that nothing in this Agreement shall prevent BASF, L1 or any of their Representatives from maintaining and making any contact with employees, directors, officers, suppliers or customers in the ordinary course of business (other than in relation to the Permitted Purpose) and provided that there is no reference to the Project, the Permitted Purpose or to the Confidential Information and no Confidential Information is disclosed.

5. DURATION; RETURN AND DESTROY

- 5.1 The undertakings of the Parties under this Agreement shall survive until the date falling two (2) years from the date hereof, or until this Agreement is terminated by the Parties hereto in writing.
- 5.2 At any time upon a Party's request, the Parties shall, and shall use reasonable efforts to procure that their Representatives shall, promptly:
- 5.2.1 Return or destroy (at the Party receiving the request's election) to the relevant other Party all Confidential Information (excluding Derivative Information) in its or its Representatives' possession, custody or control;
- 5.2.2 destroy all Derivative Information, and
- 5.2.3 permanently remove all Confidential Information from any computer, disk or other device containing Confidential Information.
- 5.3 Notwithstanding the foregoing, each Party may retain Confidential Information (i) to the extent required by applicable law, regulation, professional record keeping obligation or *bona fide* written internal compliance policy, and (ii) saved as computer records and files that have been created pursuant to automatic electronic archiving, IT back-up or internal disaster recovery procedures (in which case no attempt will be made to access it) provided that in each case such retained Confidential Information shall continue to be held in accordance with the obligations contained herein as long as Confidential Information is so retained.



6. INTELLECTUAL PROPERTY

The Parties agree that any Confidential Information made available pursuant to this Agreement is and shall remain the exclusive property of its respective owners. Neither this Agreement nor the disclosure of Confidential Information shall be taken as implying an assignment, licence or transfer of patents, know-how, trade secrets or any other intellectual property rights in the Confidential Information.

7. NO REPRESENTATION OR WARRANTY

7.1 The Parties are responsible for making their own decision on the Confidential Information and for conducting their own investigations and analysis as to the merits of pursuing the Project and should consult its own professional financial, legal, tax and other specialist advisors. Each Party understands that the Confidential Information does not purport to be all inclusive and that no representation or warranty is made by any person as to the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied hereunder or as to the reasonableness of any assumptions on which any of the same is based. Accordingly, the Parties shall not:

7.1.1 have any liability to the other Parties or any other person resulting from the use of the Confidential Information or any other information supplied, or for any opinions expressed by any of them, or for any errors, omissions or misstatements made by any of them in connection with the Project unless otherwise agreed upon in any binding agreement between the Parties with respect to the Project;

7.1.2 have any liability to the other Parties or any other person resulting from the failure to disclose Confidential Information or other information to the other Parties; and

7.1.3 shall not be under any obligation to provide further Confidential Information, to update Confidential Information or to correct any inaccuracies.

This Clause 7.1 does not exclude any liability for, or remedy in respect of, fraudulent misrepresentation or fraud.

7.2 Neither Party shall owe any duty of care to the other Parties, their Representatives or any other person.

8. GENERAL

8.1 The Parties acknowledge, and undertake to inform their respective Representatives (save to the extent such Representatives are already subject to contractual, professional or regulatory requirements regarding insider dealing and market abuse), that some or all of the Confidential Information and the Project as such is or may be price-sensitive information with regard to financial instruments within the meaning of Art. 3 of EU-Regulation 596/2014 (EU Market Abuse Regulation) and inside information within the meaning of Article 7 of EU-Regulation 596/2014 (EU Market Abuse Regulation) in the case of Harbour as such regulation forms part of domestic law in the UK by virtue of the European Union (Withdrawal) Act 2018 and that the use of such information may be regulated or prohibited by applicable legislation including securities laws relating to insider dealing and market abuse.

8.2 The Parties are aware of the fact that any exchange of information carried out under this Agreement has to be carried out in full compliance with applicable laws including but not

limited to EU, UK and other applicable national competition laws and agree to strictly abide by such laws.

- 8.3 The Parties acknowledge the sensitive, confidential and proprietary nature of the Confidential Information and the possibility that irrecoverable damage could be inflicted on the other Parties or their Affiliates if any such Confidential Information is disclosed or communicated to any person otherwise than as permitted under this Agreement. Without prejudice to any other rights or remedies which the Parties and or their Affiliates may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement and each Party and their Affiliates may be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach and no proof of special damages will be necessary for the enforcement of such remedies.
- 8.4 No failure, delay, relaxation or forbearance on the part of a Party in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 8.5 The Parties shall have the right under any applicable statutory provision to enforce the terms of this Agreement (as amended from time to time).
- 8.6 The representations, covenants, undertakings and other assurances provided by the Parties herein are given for the benefit of the relevant other Parties and their Affiliates. Save for other Parties' Affiliates in accordance with the forgoing sentence, 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.
- 8.7 The Parties hereby confirm that they are acting as principal in this matter and not as broker, agent or trustee for any other person. No Party may not assign, novate or transfer this Agreement in whole or in part to any other party without the prior written consent of the other Parties (not to be unreasonably withheld or delayed).
- 8.8 This Agreement only relates to the disclosure of information. Nothing in this Agreement and no action by the Parties pursuant to this Agreement alone or viewed in conjunction with any other contract, document or course of conduct shall constitute or be construed to constitute a partnership, joint venture, or any other co-operative relationship.
- 8.9 This Agreement, the decision to enter into discussions in respect of the Permitted Purpose, and the supply of all information and documents, whether containing Confidential Information or otherwise, do not constitute an offer to enter into any contract or form the basis of any representation in relation to any contract. No Party is under obligation to accept, review or consider any proposal or offer which the other Party may submit, and each Party may end discussions without giving any reason for doing so and without incurring any liability to other Parties.
- 8.10 No variation of the terms of this Agreement including this clause shall be effective as against a party to this Agreement unless in writing and signed by a duly authorised representative of that Party.
- 8.11 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, so that each provision is severable from each other provision.

- 8.12 This Agreement (and any non-contractual obligations arising out of or in connection with this Agreement) shall be governed by and construed in accordance with the laws of England & Wales.
- 8.13 Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be in the city of Basel, Switzerland London, England. The arbitral proceedings shall be conducted in English.
- 8.14 This Agreement can be executed in three identical copies, each of which shall be deemed an original and can be signed using electronic signatures or via exchange of pdf-scans of signature pages.

Signed for and on behalf of
BASF SE

(signature) 

Name: Andre Wehrmann
Title: Senior Vice President

(signature) 

Name: Dr. Georg Franzmann
Title: Vice President

Signed for and on behalf of
L1 Energy (UK) LLP

(signature) _____

Name:
Title:

(signature) _____

Name:
Title:

Signed for and on behalf of
Harbour Energy Plc

(signature) _____

Name:
Title:

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Signed for and on behalf of
BASF SE

(signature) 

Name: Andre Wehrmann
Title: Senior Vice President

(signature) 

Name: Dr. Georg Franzmann
Title: Vice President

Signed for and on behalf of
LI Energy (UK) LLP

(signature) 

Name: *Tim Summers*
Title: *MANAGING PARTNER*

(signature) 

Name:
Title:

Signed for and on behalf of
Harbour Energy Plc

(signature) 

Name: *MURRAY LANE*
Title: *GENERAL COUNSEL*