

## **IMPORTANT NOTICE**

**IMPORTANT: You must read the following disclaimer before continuing.** The following disclaimer applies to the attached tender offer and consent solicitation memorandum (the “**Tender Offer and Consent Solicitation Memorandum**”), and you are therefore required to read this disclaimer page carefully before accessing, reading or making any other use of the Tender Offer and Consent Solicitation Memorandum. By accessing the Tender Offer and Consent Solicitation Memorandum, you agree to be bound by the following terms and conditions, including any modifications to them from time to time, each time you receive any information from DTEK Holdings Limited, as offeror (the “**Offeror**”), DTEK Energy B.V., as successor issuer to DTEK Finance plc (in such capacity, the “**Issuer**”), and/or GLAS Specialist Services Limited (the “**Tender and Tabulation Agent**”) as a result of such access. Capitalised terms used but not otherwise defined in this disclaimer shall have the meaning given to them in the Tender Offer and Consent Solicitation Memorandum.

**THIS ELECTRONIC TRANSMISSION DOES NOT CONTAIN OR CONSTITUTE AN OFFER OF, OR THE SOLICITATION OF AN OFFER TO BUY OR SUBSCRIBE FOR, NOTES TO ANY PERSON IN ANY JURISDICTION WHERE SUCH AN OFFER IS UNLAWFUL.**

**THE TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM MAY NOT BE FORWARDED OR DISTRIBUTED TO ANY OTHER PERSON AND MAY NOT BE REPRODUCED IN ANY MANNER WHATSOEVER. THE TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM MAY ONLY BE DISTRIBUTED TO PERSONS TO WHOM IT IS OTHERWISE LAWFUL TO SEND THE TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM. ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THE TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM IN WHOLE OR IN PART IS UNAUTHORISED. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN A VIOLATION OF THE APPLICABLE SECURITIES LAWS AND MAY RENDER INVALID ANY PURPORTED ACCEPTANCE.**

**Confirmation of your representation:** In order to be eligible to view the attached Tender Offer and Consent Solicitation Memorandum or make an investment decision with respect to the Tender Offer or otherwise participate in the Consent Solicitation, you must be able to participate lawfully in the Tender Offer or the Consent Solicitation, as the case may be, on the terms and subject to the conditions set out in this Tender Offer and Consent Solicitation Memorandum, including the offer, solicitation and distribution restrictions set out on pages 9 to 10 thereof (the “**Offer, Solicitation and Distribution Restrictions**”) in respect of the outstanding 7.0/7.5% Senior Secured PIK Toggle Notes due 2027 originally issued by DTEK Finance plc, with DTEK Energy B.V. as successor issuer to DTEK Finance plc (ISIN: XS2342930521) (the “**Notes**”).

The Tender Offer and Consent Solicitation Memorandum was sent at your request, and by accessing the Tender Offer and Consent Solicitation Memorandum you will be deemed to have represented to the Offeror, the Issuer, the Tender and Tabulation Agent and the Trustee that:

- (i) you are a holder or a beneficial owner of the Notes;
- (ii) you are a person to whom it is lawful to send the Tender Offer and Consent Solicitation Memorandum or to make an invitation pursuant to the Tender Offer and the Consent Solicitation in accordance with applicable laws, including the Offer, Solicitation and Distribution Restrictions;
- (iii) you consent to delivery of the Tender Offer and Consent Solicitation Memorandum by electronic transmission; and
- (iv) you are not a Sanctions Restricted Person (as defined herein).

The Tender Offer and Consent Solicitation Memorandum has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of electronic transmission and consequently none of the Offeror, the Issuer, the Tender and Tabulation Agent or any person who controls, or is a director, officer, employee, agent or affiliate of, any such person accepts any liability or responsibility whatsoever in respect of any difference between the Tender Offer and Consent Solicitation Memorandum distributed to you in electronic format and the hard copy version available to you on request from the Tender and Tabulation Agent. You are also reminded that the attached Tender Offer and Consent Solicitation Memorandum has been sent to you on the basis that you are a person into whose possession the Tender Offer and Consent Solicitation Memorandum may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located or resident and you may not, nor are you authorised to, deliver the Tender Offer and Consent Solicitation Memorandum to any other person.

If you have recently sold or otherwise transferred your entire holding(s) of the Notes, you should notify the Tender and Tabulation Agent immediately.

Any materials relating to the Tender Offer or the Consent Solicitation do not constitute, and may not be used in connection with, any form of offer or solicitation in any place where such offers or solicitations are not permitted by law.

The Tender Offer and Consent Solicitation Memorandum may only be communicated to persons in the United Kingdom in circumstances where section 21(1) of the Financial Services and Markets Act 2000 does not apply.

**Restrictions:** Nothing in this electronic transmission constitutes an offer to buy or the solicitation of an offer to sell securities in any jurisdiction in which such offer or solicitation would be unlawful. The Tender Offer and the Consent Solicitation are subject to offer, solicitation and distribution restrictions in, amongst other jurisdictions, the United Kingdom, Italy, Luxembourg, France, Belgium, Ireland and the Russian Federation.

**The distribution of the Tender Offer and Consent Solicitation Memorandum in certain jurisdictions may be restricted by law. Persons into whose possession the Tender Offer and Consent Solicitation Memorandum comes are required by the Offeror, the Issuer and the Tender and Tabulation Agent to inform themselves about, and to observe, any such restrictions.** See also “*Offer, Solicitation and Distribution Restrictions*” in the Tender Offer and Consent Solicitation Memorandum.

This Tender Offer and Consent Solicitation Memorandum contains important information which should be read carefully before any decision is made with respect to the Tender Offer or the Consent Solicitation. If any holder of the Notes is in any doubt as to the action it should take, it is recommended to seek its own financial advice, including as to any tax consequences, from its stockbroker, bank manager, solicitor, accountant or other independent financial, tax or legal adviser. Any individual or company whose Notes are held on its behalf by a broker, dealer, bank, custodian, trust company or other nominee must contact such entity if it wishes to tender Notes in the Tender Offer or otherwise participate in the Consent Solicitation.

## **DTEK Energy B.V., as successor issuer to DTEK Finance plc**

*(as the “Issuer” in the Consent Solicitation referred to below)*

## **DTEK Holdings Limited**

*(as the “Offeror” in the Tender Offer referred to below)*

### **Invitation to tender**

**the 7.0/7.5% Senior Secured PIK Toggle Notes due 2027, originally issued by DTEK Finance plc, with DTEK Energy B.V. as successor issuer to DTEK Finance plc (the “Notes”) for purchase by the Offeror for cash at prices to be determined pursuant to an unmodified Dutch auction (the “Tender Offer”)**

**and**

**Solicitation of Consents to the Proposed Amendments to the Indenture governing such Notes (the “Consent Solicitation”),**

all as further described, and subject to the terms set out, in this Tender Offer and Consent Solicitation Memorandum

<b>Description of the Notes</b>	<b>ISIN</b>	<b>Outstanding Principal Amount<sup>(1)</sup></b>	<b>Minimum Purchase Price</b>	<b>Purchase Price</b>	<b>Maximum Acceptance Amount</b>	<b>Consent Consideration<sup>(2)</sup></b>
7.0/7.5% Senior Secured PIK Toggle Notes due 2027	XS2342930521	U.S.\$1,496,874,012	U.S.\$0 per U.S.\$1,000 in principal amount of the Notes	To be determined as set out herein pursuant to an unmodified Dutch auction procedure	U.S.\$50,000,000	0.75 per cent.

(1) of which U.S.\$271,229,635.35 is held by the Offeror and is not outstanding for the purposes of the Indenture.

(2) as a percentage of the principal amount of the Notes for which Consents have been delivered and accepted by the Issuer.

**THE TENDER OFFER AND CONSENT SOLICITATION BEGIN ON THE DATE OF THIS TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM AND WILL EXPIRE AT 5:00 P.M. (LONDON TIME) ON 26 SEPTEMBER 2023 (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED IN THE OFFEROR’S AND THE ISSUER’S SOLE DISCRETION, THE “EXPIRATION DEADLINE”). NOTEHOLDERS MUST VALIDLY TENDER THEIR NOTES AND/OR PROVIDE THEIR CONSENTS AT OR PRIOR TO THE EXPIRATION DEADLINE TO PARTICIPATE IN THE TENDER OFFER AND/OR THE CONSENT SOLICITATION. NOTEHOLDERS THAT VALIDLY DELIVER THEIR CONSENTS AT OR PRIOR TO THE EXPIRATION DEADLINE, AND DO NOT VALIDLY REVOKE SUCH CONSENTS PRIOR TO THE EFFECTIVE TIME, WILL BE ELIGIBLE TO RECEIVE THE CONSENT CONSIDERATION.**

**DIRECT PARTICIPANTS, CLEARING SYSTEMS AND THEIR INTERMEDIARIES WILL HAVE DEADLINES FOR RECEIVING INSTRUCTIONS EARLIER THAN THE EXPIRATION DEADLINE AND NOTEHOLDERS SHOULD CONTACT THE INTERMEDIARY THROUGH WHICH THEY HOLD THEIR NOTES AS SOON AS POSSIBLE TO ENSURE PROPER AND TIMELY DELIVERY OF INSTRUCTIONS.**

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## SUMMARY OF THE TENDER OFFER AND THE CONSENT SOLICITATION

This Tender Offer and Consent Solicitation Memorandum contains important information which should be read carefully before any decision is made with respect to the Tender Offer or the Consent Solicitation. If any Holder is in any doubt as to the contents of this Tender Offer and Consent Solicitation Memorandum or is unsure of the action it should take, it is recommended to seek its own financial and legal advice, including in respect of any tax consequences, immediately from its broker, bank manager, solicitor, accountant or other independent financial, legal or other adviser. Any individual or company whose Notes are held on its behalf by a broker, dealer, bank, custodian, trust company, direct participant or other nominee or intermediary must contact such entity if it wishes to tender such Notes pursuant to the Tender Offer or to provide Consents pursuant to the Consent Solicitation. The distribution of this Tender Offer and Consent Solicitation Memorandum in certain jurisdictions may be restricted by law (see “*Offer, Solicitation and Distribution Restrictions*”). None of the Issuer, the Offeror, the Tender and Tabulation Agent, the Trustee or any of their respective affiliates makes any recommendation as to whether holders of Notes should tender their Notes pursuant to the Tender Offer or otherwise participate in the Consent Solicitation.

The Offeror and the Issuer, respectively, invite, subject to the offer, solicitation and distribution restrictions in “*Offer, Solicitation and Distribution Restrictions*”, holders of the Notes:

- (A) to tender any and all of their Notes for purchase by the Offeror for cash at prices to be determined pursuant to an unmodified Dutch auction; or
- (B) to consent to the Proposed Amendments.

The Tender Offer and the Consent Solicitation are made on the terms and subject to the conditions set out in this Tender Offer and Consent Solicitation Memorandum.

Before making a decision whether to tender Notes for purchase pursuant to the Tender Offer or otherwise participate in the Consent Solicitation, Noteholders should carefully consider all of the information in this Tender Offer and Consent Solicitation Memorandum and, in particular, the risk factors described in “*Risk Factors and Other Considerations*”.

Capitalised terms used in this Tender Offer and Consent Solicitation Memorandum but not included in the “*Definitions*” section of this Tender Offer and Consent Solicitation Memorandum have the meaning given in Sections 1.01 “*Definitions*” or 1.02 “*Other Definitions*” of the Indenture, and any other definitions of such terms are for ease of reference only and do not affect their interpretation.

Below is a summary of the options available to the Noteholders in connection with the submission of instructions relating to the Tender Offer or the Consent Solicitation, and the effect of submitting such instructions, in each case subject to the terms and conditions of the Tender Offer and Consent Solicitation set out in this Tender Offer and Consent Solicitation Memorandum.

Action taken by a Noteholder	Effect of taking such action	Total Consideration
Tender Instruction submitted before the Expiration Deadline	Notes are tendered and a Consent is provided.	The relevant Purchase Price Payment, the Accrued Interest Payment and the Consent Consideration.

<b>Action taken by a Noteholder</b>	<b>Effect of taking such action</b>	<b>Total Consideration</b>
Consent Only Instruction submitted before the Expiration Deadline	Consent is provided but no Notes are tendered.	Consent Consideration.

## **The Tender Offer**

The price the Offeror will pay for the Notes validly tendered and accepted for purchase by the Offeror pursuant to the Tender Offer will be determined pursuant to an unmodified Dutch auction (the “**Unmodified Dutch Auction Procedure**”), as more fully described in this Tender Offer and Consent Solicitation Memorandum.

Under the Unmodified Dutch Auction Procedure, the purchase price (specific to each Noteholder) in respect of the Notes validly tendered by a Noteholder and accepted for purchase by the Offeror pursuant to the Tender Offer (each such price, expressed as a dollar amount per U.S.\$1,000 in principal amount of the Notes which will be purchased by the Offeror from such Noteholder, a “**Purchase Price**”) shall be equal to the Submitted Purchase Price specified by the relevant Noteholder in the relevant Tender Instruction, subject to the Minimum Purchase Price and the Maximum Acceptance Amount, as more fully described in this Tender Offer and Consent Solicitation Memorandum.

**As the Purchase Price applicable to each relevant Noteholder who submits a valid Tender Instruction that is accepted by the Offeror is the price specified by such Noteholder in the relevant Tender Instruction, the Purchase Price payable to each Noteholder will not necessarily be the same.**

**Notwithstanding any other provision of the Tender Offer, the Offeror’s obligation to accept for purchase any validly tendered Notes pursuant to the Tender Offer is conditional upon receipt of the Requisite Consents (as defined below) by the Issuer in the Consent Solicitation and the effectiveness of the Proposed Amendments.**

The Offeror proposes to accept, on the terms and subject to the conditions contained in this Tender Offer and Consent Solicitation Memorandum, Notes for purchase such that the total amount payable by the Offeror for the Notes validly tendered and accepted for purchase (excluding any amounts payable in respect of the Accrued Interest on such Notes) does not exceed U.S.\$50,000,000 (“**Maximum Acceptance Amount**”). The Offeror in its sole and absolute discretion may elect to change the Maximum Acceptance Amount. In the event of a change in the Maximum Acceptance Amount, the Tender Instructions submitted in the Tender Offer before the announcement of such increase shall continue to be irrevocable. See “*Amendment and Termination*”.

Provided that the Requisite Consents are obtained and the Proposed Amendments have become effective, the Offeror will accept for purchase, subject to terms and conditions of this Tender Offer and Consent Solicitation Memorandum, validly tendered Notes in the order (of the respective Submitted Purchase Price) starting from the lowest Submitted Purchase Price to any higher Submitted Purchase Price, up to and including the Submitted Purchase Price that represents highest price that yields an aggregate amount payable by the Offeror (calculated as the sum of all relevant Purchase Price Payments, subject to pro ration as more fully described in “*Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Acceptance of Tender Instructions and Pro-Ration*”) that is equal to or less than the Maximum Acceptance Amount.

The Offeror will also pay, on the Settlement Date, Accrued Interest Payments in respect of the Notes accepted for purchase pursuant to the Tender Offer. The expected Settlement Date is 17 October 2023, which is after the Q3 2023 coupon payment date. All Noteholders will receive their full coupon payment for Q3 2023. Noteholders who participate in the Tender Offer will also receive Accrued Interest from (and including) 30

September 2023 to (but excluding) 17 October 2023 or such other Settlement Date as is announced by the Offeror subject to the right of the Offeror to extend, amend and/or terminate the Tender Offer.

In order to participate in, and be eligible to receive the relevant Purchase Price Payment and Accrued Interest Payment pursuant to the Tender Offer, Holders must validly tender their Notes by delivering, or arranging to have delivered on their behalf, a valid Tender Instruction that is received by the Tender and Tabulation Agent by the Expiration Deadline. See *“Procedures for Participating in the Tender Offer or the Consent Solicitation”*. A Tender Instruction must specify a Submitted Purchase Price and a Submitted Purchase Amount. See *“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Submission of Tender Instructions by Noteholders”*.

**Tender Instructions will be irrevocable unless the Tender Offer is terminated or as otherwise required by applicable law.**

The Offeror and/or the Issuer are expected to announce the results of the Tender Offer on the next business day after the Expiration Deadline. See *“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Announcements”*.

The expected Settlement Date for the Tender Offer is 17 October 2023.

### **The Consent Solicitation**

The Issuer hereby solicits the consents (the **“Consents”**) upon the terms and subject to the conditions set forth in this Tender Offer and Consent Solicitation Memorandum, of holders of Notes to amend certain provisions of the indenture, dated as of 17 May 2021, among DTEK Finance plc, as original issuer, the Guarantors named therein, GLAS Trust Company LLC, as trustee (the **“Trustee”**) and paying agent (the **“Paying Agent”**), GLAS Trust Corporation Limited, as security agent and GLAS USA LLC, as transfer agent and registrar, as amended by the supplemental indenture dated as of 25 November 2022, among DTEK Finance plc, as original issuer, the Issuer, as successor issuer, DTEK Energy B.V., as parent guarantor (in such capacity, the **“Parent Guarantor”**), the other Guarantors party thereto and the Trustee, as amended by the supplemental indenture dated as of 13 December 2022, among the Issuer, the Parent Guarantor and the Trustee, as further amended by the supplemental indenture dated as of 21 July 2023, among DTEK Finance plc, as subsidiary guarantor, the Issuer and the Trustee and as amended, supplemented or otherwise modified from time to time (the **“Indenture”**), as more fully described in this Tender Offer and Consent Solicitation Memorandum.

Pursuant to the Proposed Amendments, the Issuer proposes to (i) add the Restricted Payments basket in Section 4.06 (Limitation on Restricted Payments) of the Indenture, (ii) make certain amendments to the definition of “Asset Sale” in Section 1.01 of the Indenture and to Section 4.09 (Limitation on Affiliate Transactions) to permit Restricted Payments that do not violate Section 4.06 (Limitation on Restricted Payments) and Permitted Investments, (iii) allow for ability to Incur Indebtedness where the Consolidated Leverage Ratio does not exceed 2.5 to 1.0, (iv) amend the definition of “Permitted Lien” in Section 1.01 of the Indenture to allow for ability to incur certain Permitted Indebtedness on a secured basis, (v) make certain amendments to the definitions of “Asset Sale” and “Permitted Investments” in Section 1.01 of the Indenture to increase the amount available under the charitable and social initiatives basket, (vi) increase the threshold for obtaining a written opinion of Independent Appraiser, (vii) amend the definition of “Permitted Business” in Section 1.01 and Exhibit O of the Indenture to include sales and purchase of mine construction and other underground services, (viii) allow for a remedy period of 45 days for Events of Default related to breach of covenants, (ix) remove limitations on activities of the Issuer and (x) permit business activities of certain Affiliates related to the development of certain battery energy storage systems. See *“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Consent Solicitation – The Proposed Amendments”*.

Adoption of the Proposed Amendments to the Indenture requires the Consents of the holders of at least a majority in aggregate principal amount of the outstanding Notes (the “**Requisite Consents**”). For the avoidance of doubt, at the date of determination the Notes held by the Issuer, its Restricted Subsidiaries or any other Guarantors will not be deemed to be outstanding for purposes of the Proposed Amendments.

Holders of Notes who wish to deliver Consents must deliver, or arrange to have delivered on their behalf, a valid Tender Instruction or Consent Only Instruction by no later than the Expiration Deadline.

**By submitting a Tender Instruction, a Noteholder will also provide a Consent for the approval of the Proposed Amendments in respect of the aggregate principal amount of the Notes tendered. A Consent by the Noteholders who submitted such Tender Instruction, even if such Tender Instruction is not accepted at all or is subject to pro-rata, will remain valid for purposes of the Consent Solicitation and will become binding and irrevocable as at the Effective Time.**

The Tender and Tabulation Agent will, promptly upon receipt of the Requisite Consents at or prior to the Expiration Deadline (and in any event, by the next Business Day following receipt of the Requisite Consents), deliver to the Issuer a certificate of the Tender and Tabulation Agent certifying that the Requisite Consents have been received and not validly revoked as of such time (the “**Tabulation Agent Certificate**”). Promptly upon receipt of the Tabulation Agent Certificate, the Issuer will deliver to the Trustee an Officers’ Certificate, accompanied by the Tabulation Agent Certificate, confirming that such Requisite Consents have been received and accepted by the Issuer (the date and time at which the Trustee receives the Officers’ Certificate, the “**Effective Time**”). The Effective Time may fall before, at or after the Expiration Deadline.

**Consents (including Consents provided with the Tender Instructions) shall become irrevocable at and after the Effective Time unless the Consent Solicitation is terminated or as otherwise provided in this Tender Offer and Consent Solicitation Memorandum and except as otherwise required by applicable law.**

At or promptly after the Effective Time (and in any event, no later than the Settlement Date), the Issuer and the Trustee intend to execute a supplemental indenture materially in the form attached as Annex A hereto (the “**Supplemental Indenture**”) to the Indenture implementing the Proposed Amendments. The Proposed Amendments shall become effective upon execution of the Supplemental Indenture. **All current Holders of the Notes, including Non-Consenting Holders, and all subsequent Holders shall be bound by the Proposed Amendments once effective.** The Issuer’s obligation to pay the Consent Consideration is conditional upon the effectiveness of the Proposed Amendments.

For Consents that have been validly delivered at or prior to the Expiration Deadline and not validly withdrawn before the Effective Time, and that are accepted by the Issuer, the Noteholders who delivered such Consents will be eligible to receive the Consent Consideration on the Settlement Date, subject to the terms and conditions of the Consent Solicitation. For the avoidance of doubt, the Issuer’s obligation to accept any validly delivered Consent and pay the Consent Consideration is conditional upon receipt of the Requisite Consents by the Issuer and the effectiveness of the Proposed Amendments.

Noteholders must follow certain procedures in order to validly deliver Consents pursuant to the Consent Solicitation. For more information, see “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

The Issuer may, in its sole discretion, extend, amend or terminate the Consent Solicitation as described in “*Amendment and Termination*”. In the event that the Consent Solicitation is terminated or otherwise not completed, the Consent Consideration will not be paid or become payable to Noteholders who have validly delivered Consents in connection with the Consent Solicitation. In any such event, the Proposed Amendments will not become effective.



## OFFER, SOLICITATION AND DISTRIBUTION RESTRICTIONS

*This Tender Offer and Consent Solicitation Memorandum does not constitute an invitation to participate in the Tender Offer or the Consent Solicitation in any jurisdiction in which, or to any person to or from whom, it is unlawful to make such invitation or for there to be such participation under applicable securities laws. The distribution of the Tender Offer and Consent Solicitation Memorandum in certain jurisdictions may be restricted by law. Persons into whose possession the Tender Offer and Consent Solicitation Memorandum comes are required by the Offeror, the Issuer and the Tender and Tabulation Agent to inform themselves about, and to observe, any such restrictions. If any recipient of this Tender Offer and Consent Solicitation Memorandum is in any doubt as to the contents hereof or the action it should take, it is recommended to seek its own financial and legal advice, including in respect of any tax consequences, immediately from its stockbroker, bank manager, solicitor, accountant or other independent financial, tax or legal adviser.*

### European Economic Area

In any member state of the European Economic Area (a “**EEA Member State**”), this Tender Offer and Consent Solicitation Memorandum is only addressed to and is only directed at qualified investors within the meaning of Article 2(e) of Regulation (EU) 2017/1129, as amended in that EEA Member State.

### Italy

Neither the Tender Offer and Consent Solicitation Memorandum nor any other documents or materials relating to the Tender Offer or the Consent Solicitation have been or will be submitted to the clearance procedure of the *Commissione Nazionale per le Società e la Borsa* (CONSOB) pursuant to Italian laws and regulations.

The Tender Offer and the Consent Solicitation are being carried out in the Republic of Italy as an exempted offer pursuant to article 101-bis, paragraph 3-bis of the Legislative Decree No. 58 of 24 February 1998, as amended (the “**Financial Services Act**”) and article 35-bis, paragraph 4 of CONSOB Regulation No. 11971 of 14 May 1999, as amended (the “**Issuers’ Regulation**”). The Tender Offer and the Consent Solicitation are also being carried out in compliance with article 35-bis, paragraph 7 of the Issuers’ Regulation.

A holder of Notes located in the Republic of Italy can tender Notes or provide Consents through authorised persons (such as investment firms, banks or financial intermediaries permitted to conduct such activities in the Republic of Italy in accordance with the Financial Services Act, CONSOB Regulation No. 20307 of 15 February 2018, as amended from time to time, and Legislative Decree No. 385 of 1 September 1993, as amended) and in compliance with applicable laws and regulations or with requirements imposed by CONSOB or any other Italian authority.

Each intermediary must comply with the applicable laws and regulations concerning information duties vis-à-vis its clients in connection with the Notes, the Tender Offer and the Consent Solicitation.

### United Kingdom

The communication of this Tender Offer and Consent Solicitation Memorandum by the Offeror and the Issuer and any other documents or materials relating to the Tender Offer or the Consent Solicitation is not being made, and such documents and/or materials have not been approved, by an authorised person for the purposes of section 21 of the Financial Services and Markets Act 2000 (the “**FSMA**”). Accordingly, such documents and/or materials are not being distributed to, and must not be passed on to, the general public in the United Kingdom. The communication of such documents and/or materials is exempt from the restriction on financial promotions under section 21 of the FSMA on the basis that it is only directed at and may be communicated to (1) those

persons who are existing members or creditors of the Offeror or the Issuer or other persons within Article 43 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, and (2) to any other persons to whom these documents and/or materials may lawfully be communicated.

## **Ireland**

This Tender Offer and Consent Solicitation Memorandum will only be distributed in Ireland in conformity with the provisions of the Companies Act 2014 (as amended), the Central Bank Acts 1942 – 2019 (as amended) and the European Union (Markets in Financial Instruments) Regulation 2017, including, without limitation, Regulation 5 thereof or any applicable provisions of Irish law.

## **General**

This Tender Offer and Consent Solicitation Memorandum does not constitute an offer to sell or buy or the solicitation of an offer to sell or buy the Notes (and offers of Notes for sale pursuant to the Tender Offer will not be accepted from the Noteholders) in any circumstances in which such offer or solicitation is unlawful.

Each Noteholder participating in the Tender Offer and/or the Consent Solicitation will be deemed to give certain representations in respect of the jurisdictions referred to above and generally as set out in “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”. Any offer of Notes pursuant to the Tender Offer from a Noteholder that is unable to make these representations will not be accepted. Each of the Offeror and the Tender and Tabulation Agent reserves the right, in its absolute discretion, to investigate, in relation to the offer of Notes for sale pursuant to the Tender Offer, whether any such representation given by a Noteholder is correct and, if such investigation is undertaken and as a result the Offeror determines (for any reason) that such representation is not correct, such tender of Notes shall not be accepted. Any Consent submitted pursuant to the Consent Solicitation by a Noteholder that is unable to make these representations will not be accepted. Each of the Issuer and the Tender and Tabulation Agent reserves the right, in its sole and absolute discretion, to investigate, in relation to any Consent submitted pursuant to the Consent Solicitation, whether any such representation given by a Noteholder is correct and, if such investigation is undertaken and as a result the Issuer determines (for any reason) that such representation is not correct, such Consent shall not be accepted.

## GENERAL

This Tender Offer and Consent Solicitation Memorandum contains important information which should be read carefully before any decision is made with respect to the Tender Offer or the Consent Solicitation. Noteholders should carefully consider all the information in this Tender Offer and Consent Solicitation Memorandum and, in particular, the risk factors described in “*Risk Factors and Other Considerations*” in this Tender Offer and Consent Solicitation Memorandum.

The Offeror and the Issuer accept responsibility for the information contained in this Tender Offer and Consent Solicitation Memorandum. To the best of the Offeror’s and the Issuer’s knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in this Tender Offer and Consent Solicitation Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.

Neither the Tender and Tabulation Agent nor the Trustee has separately verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is made and no liability or responsibility is accepted by the Tender and Tabulation Agent, the Trustee or their respective affiliates, directors or employees as to the accuracy, validity, correctness or completeness of the information contained in this Tender Offer and Consent Solicitation Memorandum or any other information provided by the Offeror or the Issuer in connection with the Tender Offer or the Consent Solicitation. Neither the Tender and Tabulation Agent, the Trustee nor their respective affiliates, directors or employees accepts any liability or responsibility with respect to any Noteholder in relation to the information contained in this Tender Offer and Consent Solicitation Memorandum or any other information provided by the Offeror or the Issuer in connection with the Tender Offer or the Consent Solicitation.

Each Noteholder is solely responsible for making its own independent appraisal of all matters as such Noteholder deems appropriate (including those relating to the Tender Offer, the Consent Solicitation, this Tender Offer and Consent Solicitation Memorandum, the Offeror and the Issuer), and each Noteholder must make its own decision as to whether to tender any or all of its Notes for purchase pursuant to the Tender Offer or to provide Consent pursuant to the Consent Solicitation. Accordingly, each person receiving this Tender Offer and Consent Solicitation Memorandum acknowledges that such person has not relied upon any of the Offeror, the Issuer, the Tender and Tabulation Agent or the Trustee in connection with its decision as to whether to participate in the Tender Offer and/or the Consent Solicitation. Each such person must make its own analysis and investigations regarding the Tender Offer or the Consent Solicitation with particular reference to its own investment objectives and experience, and any other factors which may be relevant to it. If such person is in any doubt about any aspect of the Tender Offer, the Consent Solicitation and/or the action it should take, including in respect of any tax consequences, it should consult its professional advisers.

None of the Offeror, the Issuer, the Tender and Tabulation Agent or the Trustee (or their respective directors, employees or affiliates) makes any recommendation whatsoever regarding this Tender Offer and Consent Solicitation Memorandum, the Tender Offer (including as to whether or not Noteholders should tender Notes in the Tender Offer) or the Consent Solicitation (including as to whether or not Noteholders should provide Consents pursuant to the Consent Solicitation). The Tender and Tabulation Agent is the agent of the Offeror and the Issuer and owes no duty to any Noteholder.

Neither the delivery of this Tender Offer and Consent Solicitation Memorandum, nor any purchase of Notes or acceptance of Consents will, under any circumstances, create any implication that the information contained in this Tender Offer and Consent Solicitation Memorandum is current as of any time subsequent to the date of such information or that there has been no material change in the information set out in it since the date of this Tender Offer and Consent Solicitation Memorandum or in the affairs of the Offeror or the Issuer since the date of this Tender Offer and Consent Solicitation Memorandum.

No person has been authorised to give any information or to make any representation about the Offeror, the Issuer, the Tender Offer or the Consent Solicitation other than as contained in the Tender Offer and Consent Solicitation Memorandum and, if given or made, such information or representation must not be relied upon as having been authorised by the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any of their respective agents.

Notes can only be tendered in accordance with the procedures described in “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

Consents can only be provided in accordance with the procedures described in “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

No Notes tendered by or Consents provided by Sanctions Restricted Persons (as defined herein) will be accepted.

Noteholders who do not participate in the Tender Offer, or whose Notes are not accepted for purchase pursuant to the Tender Offer, will continue to hold their Notes subject to the terms and conditions of such Notes.

The applicable provisions of the Financial Services and Markets Act 2000, as amended (the “FSMA”) must be complied with in respect of anything done in relation to the Tender Offer or the Consent Solicitation in, from or otherwise involving the United Kingdom. This Tender Offer and Consent Solicitation Memorandum is not a prospectus for the purposes of Regulation (EU) 2017/1129 of the European Parliament and of the Council dated 14 June 2017.

Unless the context otherwise requires, references in this Tender Offer and Consent Solicitation Memorandum to “**Noteholders**”, “**Holders**” or “**holders of Notes**” include:

- (i) each person who is shown in the records of the Clearing Systems (as defined herein) as a holder of the Notes (also referred to as “**Direct Participants**” and each a “**Direct Participant**”); and
- (ii) each beneficial owner of the Notes holding such Notes, directly or indirectly, in an account in the name of a Direct Participant acting on such beneficial owner’s behalf,

except that for the purposes of any payment to a Noteholder (i) pursuant to the Tender Offer of the relevant Purchase Price Payment and the Accrued Interest Payment; or (ii) pursuant to Consent Solicitation of Consent Consideration, to the extent the beneficial owner of the relevant Notes is not a Direct Participant, such payment will only be made by the relevant Clearing System to the relevant Direct Participant and the making of such payment by the Offeror or Issuer (as applicable) to such Clearing System and by such Clearing System to such Direct Participant will satisfy the respective obligations of the Offeror or Issuer (as applicable) and such Clearing System in respect of such payment.

All references in this Tender Offer and Consent Solicitation Memorandum to “**U.S. Dollars**” and “**U.S.\$**” refer to the lawful currency of the United States of America.

See “*Risk Factors and Other Considerations*” for a discussion of certain factors that should be considered in evaluating the Tender Offer and the Consent Solicitation.

Capitalised terms used in this Tender Offer and Consent Solicitation Memorandum but not included in the “*Definitions*” section of this Tender Offer and Consent Solicitation Memorandum have the meaning given in Sections 1.01 “*Definitions*” or 1.02 “*Other Definitions*” of the Indenture, and any other definitions of such terms are for ease of reference only and do not affect their interpretation.

Questions and requests for assistance in connection with (i) the Tender Offer, (ii) the delivery of Tender Instructions, (iii) the Consent Solicitation or (iv) the delivery of Consent Only Instructions may be directed to

the Tender and Tabulation Agent, the contact details for which are on the last page of this Tender Offer and Consent Solicitation Memorandum.

This Tender Offer and Consent Solicitation Memorandum contains important information which should be read carefully before any decision is made with respect to the Tender Offer or the Consent Solicitation. If any Noteholder is in any doubt as to the contents of the Tender Offer and Consent Solicitation Memorandum or the action it should take, it is recommended to seek its own financial advice, including in respect of any tax consequences, immediately from its stockbroker, bank manager, solicitor, accountant or other independent financial, tax or legal adviser. Any individual or company whose Notes are held on its behalf by a broker, dealer, bank, custodian, trust company or other nominee must contact such entity if it wishes to tender such Notes pursuant to the Tender Offer or provide Consents pursuant to the Consent Solicitation. The distribution of the Tender Offer and Consent Solicitation Memorandum in certain jurisdictions may be restricted by law (see “*Offer, Solicitation and Distribution Restrictions*”). None of the Tender and Tabulation Agent, the Trustee, the Offeror or the Issuer makes any recommendation as to whether holders of Notes should tender Notes pursuant to the Tender Offer or otherwise participate in the Consent Solicitation.

## EXPECTED TIMETABLE OF KEY EVENTS

The following table sets forth the expected dates and times of the key events relating to the Tender Offer and the Consent Solicitation. The times and dates below are indicative only. The below times and dates are subject to the right of the Offeror to extend, amend and/or terminate the Tender Offer and the right of the Issuer to extend, amend and/or terminate the Consent Solicitation (subject to applicable law and as provided in this Tender Offer and Consent Solicitation Memorandum). Accordingly, the actual timetable may differ significantly from the timetable below. Noteholders are urged to check with any bank, securities broker or other intermediary through which they hold Notes when such intermediary would need to receive instructions from a Noteholder in order for that Noteholder to be able to participate in the Tender Offer and/or the Consent Solicitation, or withdraw its instruction to participate in the Consent Solicitation. **The deadlines set by any such intermediary and each Clearing System will be earlier than the relevant deadlines specified below. See “Procedures for Participating in the Tender Offer or the Consent Solicitation”.**

Events	Times and Dates
<p><b><i>Commencement Date</i></b></p> <p>Announcement of the Tender Offer and the Consent Solicitation. Tender Offer and Consent Solicitation Memorandum available from the Tender and Tabulation Agent.</p>	12 September 2023
<p><b><i>Effective Time</i></b></p> <p>Promptly upon receipt of the Requisite Consents as certified by the Tender and Tabulation Agent, the Issuer will deliver to the Trustee an Officers’ Certificate, accompanied by the Tabulation Agent Certificate, confirming that such Requisite Consents have been received and accepted by the Issuer.</p> <p>For the avoidance of doubt, the Effective Time may fall before, at or after the Expiration Deadline.</p>	The date and time at which the Trustee receives the Officers’ Certificate
<p><b><i>Expiration Deadline</i></b></p> <p>Deadline for receipt of valid Tender Instructions by the Tender and Tabulation Agent for Noteholders to participate in the Tender Offer.</p> <p>Deadline for receipt of valid Consent Only Instructions by the Tender and Tabulation Agent for Noteholders who do not tender their Notes in the Tender Offer to participate in the Consent Solicitation and be eligible to receive the Consent Consideration.</p>	5:00 p.m. (London time) on 26 September 2023
<p><b><i>Announcement of Consent Solicitation Results</i></b></p> <p>Announcement that the Requisite Consents have been obtained.</p>	On or about 27 September 2023
<p><b><i>Announcement of Tender Offer Results</i></b></p> <p>Announcement that the Requisite Consents have been obtained.</p>	On or about 27 September 2023

Provided that the Requisite Consents have been obtained and the Proposed Amendments have become effective, announcement of (i) the aggregate principal amount of the Notes which will be accepted for purchase pursuant to the Tender Offer, (ii) the sum of all Purchase Price Payments, (iii) the Highest Accepted Purchase Price, (iv) the Scaling Factor, if applicable, for Pro-Rated Holders and (v) the expected Settlement Date.

***Settlement Date***

On or about 17 October 2023

The date on which (i) the Offeror deposits, no later than 12:00 p.m. (London time), with the Paying Agent the aggregate amount of the Purchase Price Payments for Notes validly tendered at or prior to the Expiration Deadline and accepted for purchase by the Offeror, together with the Accrued Interest Payments and (ii) the Issuer deposits, no later than 12:00 p.m. (London time), with the Paying Agent the amount necessary to pay the Consent Consideration.

The expected Settlement Date is after the Interest Payment Date falling on 30 September 2023. Accordingly, all Noteholders will receive the interest due and payable on 30 September 2023, and Noteholders who participate in the Tender Offer will additionally receive interest in respect of the principal amount of the Notes tendered by them which accrues from (and including) 30 September 2023 to (but excluding) the Settlement Date.

*Unless stated otherwise, announcements in connection with the Tender Offer and the Consent Solicitation will be made via the website of the Euronext Dublin and by the delivery of notices to the Clearing Systems for communication to Direct Participants. Copies of all such announcements, press releases and notices can also be obtained from the Tender and Tabulation Agent whose contact details are on the last page of this Tender Offer and Consent Solicitation Memorandum.*

Noteholders are urged to check with any bank, securities broker or other intermediary through which they hold Notes when such intermediary would need to receive instructions from a Noteholder in order for that Noteholder to be able to participate in the Tender Offer and/or the Consent Solicitation, or (in the limited circumstances in which revocation is permitted) revoke their instructions to participate in the Consent Solicitation before the deadlines specified in this Tender Offer and Consent Solicitation Memorandum. The deadlines set by any such intermediary and each Clearing System will be earlier than the relevant deadlines specified above.

## DEFINITIONS

<b>“Accrued Interest”</b>	Interest accrued and unpaid on the Notes from (and including) the immediately preceding interest payment date for the Notes to (but excluding) the Settlement Date, calculated in accordance with the terms and conditions of the Notes.
<b>“Accrued Interest Payment”</b>	An amount in cash (rounded to the nearest cent with half a cent being rounded upwards) equal to the Accrued Interest on the Notes validly tendered by a Noteholder and accepted for purchase by the Offeror in the Tender Offer.
<b>“Clearing System Notice”</b>	The “Deadlines and Corporate Events” or similar form of notice to be sent to Direct Participants by each of the Clearing Systems on or about the date of this Tender Offer and Consent Solicitation Memorandum informing Direct Participants of the procedures to be followed in order to participate in the Tender Offer and/or the Consent Solicitation.
<b>“Clearing Systems”</b>	Euroclear and Clearstream, Luxembourg.
<b>“Clearstream, Luxembourg”</b>	Clearstream Banking S.A.
<b>“Consent”</b>	A consent by a Noteholder for the Proposed Amendments.
<b>“Consent Consideration”</b>	An amount in cash equal to 0.75 per cent. of the principal amount of Notes in respect of which Consents have been delivered, not validly revoked and accepted by the Issuer.
<b>“Consent Only Instruction”</b>	An electronic consent and blocking instruction in the form specified in the Clearing System Notice for delivery by Direct Participants to the Tender and Tabulation Agent via the relevant Clearing System and in accordance with the requirements of such Clearing System by the relevant deadlines in order for Noteholders to be able to participate in the Consent Solicitation and provide their Consents to the Proposed Amendments.
<b>“Consent Solicitation”</b>	The solicitation by the Issuer of Consents from the Noteholders to the Proposed Amendments, on the terms and subject to the conditions set out in this Tender Offer and Consent Solicitation Memorandum, including the restrictions set out in <i>“Offer, Solicitation and Distribution Restrictions”</i>
<b>“Direct Participant”</b>	Each person who is shown in the records of the relevant Clearing System as a holder of the Notes (except for any Clearing System in its capacity as an accountholder of another Clearing System).
<b>“Effective Time”</b>	The date and time at which the Trustee receives an Officers’ Certificate certifying that the Requisite Consents have been received and accepted by the Issuer.
<b>“Euroclear”</b>	Euroclear Bank SA/NV.
<b>“Euronext Dublin”</b>	The Irish Stock Exchange plc, trading as Euronext Dublin.
<b>“Expiration Deadline”</b>	5:00 p.m. (London time) on 26 September 2023.



<b>“Highest Accepted Purchase Price”</b>	The highest Purchase Price in the Tender Offer, determined as set out in <i>“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Acceptance of Tender Instructions and Pro-Ration”</i> .
<b>“Indenture”</b>	Has the meaning given to it in the <i>“Summary of the Tender Offer and the Consent Solicitation – The Consent Solicitation”</i>
<b>“Issuer”</b>	DTEK Energy B.V., as successor issuer to DTEK Finance plc.
<b>“Maximum Acceptance Amount”</b>	The highest sum payable by the Offeror for all Purchase Price Payments, as set out on the cover page of this Tender Offer and Consent Solicitation Memorandum.
<b>“Minimum Denomination”</b>	U.S.\$2,000 in principal amount of the Notes.
<b>“Minimum Purchase Price”</b>	The lowest Purchase Price at which the Notes will be accepted for purchase by the Offeror, as set out on the cover page of this Tender Offer and Consent Solicitation Memorandum.
<b>“Non-Consenting Noteholders”</b>	A Noteholder that does not submit a valid Tender Instruction or Consent Only Instruction.
<b>“Noteholder”, “Holder” or “holders of Notes”</b>	A holder of Notes (including as further defined in the section <i>“General”</i> on page 11).
<b>“Notes”</b>	As set out on the cover page of this Tender Offer and Consent Solicitation Memorandum
<b>“Offeror”</b>	DTEK Holdings Limited
<b>“Parent Guarantor”</b>	DTEK Energy B.V.
<b>“Pro-Rated Holders”</b>	Has the meaning given to it in the <i>“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Acceptance of Tender Instructions and Pro-Ration”</i>
<b>“Proposed Amendments”</b>	Has the meaning given to it in the <i>“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Consent Solicitation – The Proposed Amendments”</i>
<b>“Purchase Price”</b>	Has the meaning given to it in the <i>“Summary of the Tender Offer and the Consent Solicitation – The Tender Offer”</i> .
<b>“Purchase Price Payment”</b>	Has the meaning given to it in the <i>“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Total Amount Payable to Noteholders”</i>
<b>“Requisite Consents”</b>	Has the meaning given to it in the <i>“Summary of the Tender Offer and the Consent Solicitation – The Consent Solicitation”</i> .
<b>“Sanctions Authority”</b>	<ul style="list-style-type: none"> <li>(i) the United States of America;</li> <li>(ii) the United Nations;</li> <li>(iii) the European Union;</li> <li>(iv) a member of the European Union;</li> <li>(v) Canada;</li> <li>(vi) Switzerland;</li> <li>(vii) Ukraine;</li> </ul>

(viii) the United Kingdom; or

(ix) the respective governmental or regulatory authority, institution or agency of any of the foregoing including, without limitation, the United Nations Security Council, the Office of Foreign Assets Control of the United States Department of the Treasury, the United States Department of State or His Majesty's Treasury of the United Kingdom or any other relevant sanctions authority;

**“Sanctions Restricted Person”**

An individual or entity (a **“Person”**):

- (i) that is, or is directly or indirectly owned or controlled by a Person that is, described or designated in (a) the most current “Specially Designated Nationals and Blocked Persons” list (which as of the date hereof can be found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>) or the Foreign Sanctions Evaders List (which as of the date hereof can be found at: [https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/fse\\_list.aspx](https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/fse_list.aspx)) or (b) the most current “Consolidated list of persons, groups and entities subject to EU financial sanctions” (which as of the date hereof can be found at: <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>); or
- (ii) that is otherwise the subject or target of any sanctions administered or enforced by any Sanctions Authority, including, but not limited to, by virtue of their inclusion in:
  - (i) the most current “Sectoral Sanctions Identifications” list (which as of the date hereof can be found at: [http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi\\_list.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx)) (the **“SSI List”**), (ii) Annexes III, IV, V and VI of Council Regulation No.833/2014, as amended, (iii) Annexes III, IV, V and VI of Council Regulation No 833/2014, as amended, as it forms part of retained EU law, as defined in the European Union (Withdrawal) Act 2018 (the **“UK Annexes”**) or (iv) any other list maintained by a Sanctions Authority, with similar effect to the SSI List, the EU or UK Annexes.

**“Scaling Factor”**

Has the meaning given to it in the *“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Acceptance of Tender Instructions and Pro-Ration”*

**“Settlement Date”**

On or about 17 October 2023 (subject to the right of the Offeror to extend, amend and/or terminate the Tender Offer and the right of the Issuer to extend, amend and/or terminate the Consent Solicitation).

<b>“Submitted Purchase Amount”</b>	The aggregate principal amount of the Notes, in increments of U.S.\$1 (subject to the Minimum Denomination) that a Noteholder is tendering at that Submitted Purchase Price.
<b>“Submitted Purchase Price”</b>	The price specified by a Noteholder in increments of U.S.\$1 per U.S.\$1,000 in principal amount of the Notes which are the subject of a Tender Instruction that such Noteholder would be willing to accept as the Purchase Price in respect of such Notes.
<b>“Tender and Tabulation Agent”</b>	GLAS Specialist Services Limited.
<b>“Tender Instruction”</b>	The electronic tender and blocking instruction in the form specified in the Clearing System Notice for submission by Direct Participants to the Tender and Tabulation Agent via the relevant Clearing System and in accordance with the requirements of such Clearing System by the relevant deadline in order for Noteholders to be able to participate in the Tender Offer.
<b>“Tender Offer”</b>	The invitation by the Offeror, on the terms and subject to the conditions set out in this Tender Offer and Consent Solicitation Memorandum, including the restrictions set out in <i>“Offer, Solicitation and Distribution Restrictions”</i> , to Holders to tender their Notes for purchase by the Offeror for cash at prices to be determined pursuant to the Unmodified Dutch Auction Procedure.
<b>“Tender Offer and Consent Solicitation Memorandum”</b>	This Tender Offer and Consent Solicitation Memorandum.
<b>“Total Payment Amount”</b>	Has the meaning given to it in the <i>“Terms and Conditions of the Tender Offer and the Consent Solicitation – The Tender Offer – Total Amount Payable to Noteholders”</i>
<b>“Unmodified Dutch Auction Procedure”</b>	The unmodified Dutch auction procedure described in this Tender Offer and Consent Solicitation Memorandum that will be used to determine the Purchase Price the Offeror will pay to a Holder of the Notes which are validly tendered and accepted for purchase by the Offeror in accordance with the terms and subject to the conditions set out in this Tender Offer and Consent Solicitation Memorandum.

## TERMS AND CONDITIONS OF THE TENDER OFFER AND THE CONSENT SOLICITATION

### Background and Rationale for the Tender Offer and the Consent Solicitation

#### *Background and Rationale for the Consent Solicitation*

On 24 February 2022, the Russian Federation commenced an invasion of Ukraine resulting in a full-scale war across the Ukrainian state, which had impact on all areas of the Ukrainian economy in response to which the Government of Ukraine declared martial law and the National Bank of Ukraine imposed a moratorium on cross-border payments. On 28 February 2022, the Chamber of Commerce and Industry of Ukraine confirmed that the ongoing hostilities had resulted in the occurrence of a force majeure situation in Ukraine.

Military fighting continues in and around several major Ukrainian cities, resulting in tens of thousands of civilian casualties and significant dislocation of the population. Russian attacks are targeted on destroying civilian infrastructure all over Ukraine, including hospitals and residential complexes. Given the difficult situation caused by the war, the needs of both humanitarian and military support for the Ukrainian government and people of Ukraine in confronting the enemy and managing security, defense and humanitarian concerns have significantly increased. The Group and its Affiliates have been and continue to be active in providing humanitarian assistance in response to the war. The Group's assistance has included donating generators, transformers and other necessary energy-related supplies to Ukrainian Railways, hospitals and shelters, providing medicines and food to displaced persons, as well as offering financial support to various Ukrainian humanitarian organizations. The humanitarian assistance provided by the Group in 2022 amounted to USD 17.6 million, and a further USD 10.6 million was provided by the Group in the first six months of 2023. As the current restrictions in the Indenture limit the ability of the Group to provide such humanitarian assistance, the Group now seeks to amend the applicable restrictions to permit sales or dispositions of assets or cash as well as investments or cash payments in an amount up to \$50 million per year for purposes of engaging in charitable or other social initiatives.

The development of energy storage systems is crucial for Ukraine's energy system, as the country's power grid faces challenges in balancing electricity demand with fluctuating supply, particularly in light of ongoing Russian missile strikes on power plants and grid infrastructure. Energy storage solutions, such as battery storage systems, can help mitigate these risks and reduce the likelihood of blackouts. Additionally, Ukraine is focusing on low-carbon generation, including nuclear and renewables, for its energy recovery. However, the growth of renewable energy is constrained by the need to address increased intermittency of power generation and to stabilise grid frequency. In this context, battery storage systems offer a fast and cost-effective solution. The Group is well positioned to utilise its existing facilities and resources to offer development and maintenance services for battery storage systems to Affiliates and third parties on commercially reasonable terms. As the current restrictions in the Indenture limit the ability of the Group to provide such development and maintenance services to Affiliates, the Group is requesting Consents to amend the applicable restrictions.

Despite the challenges and disruptions the Group has faced as a result of the war in Ukraine, its financial performance has proven resilient, with UAH 70,818 million in revenue for the year ended 31 December 2022 and UAH 29,386 million in revenue for the half-year period ended 30 June 2023.

Furthermore, the Group has been proactively managing its debt maturity and repayment, reducing its debt by approximately 30 per cent. (or U.S.\$456 million) since the beginning of the war through semi-annual amortization of U.S.\$10 million every six months, a Discounted Notes Repurchase (as defined in the Indenture) in November 2022 and two voluntary unmodified Dutch auction tender offers on 16 December 2022 and 24 March 2023, respectively (the "**Second and Third Repurchases**"). As of the date of this Tender Offer and Consent Solicitation Memorandum, the Group's outstanding debt stands at approximately U.S.\$1.2 billion.

Although the Group does not expect a Discounted Notes Repurchase to take place based on the semi-annual financial results for 2023, it is launching the Tender Offer alongside the Consent Solicitation, aiming to further repay its debt and align its leverage with market levels for comparable companies.

The Group is actively exploring and pursuing opportunities to secure additional funding for the purposes of repairing and replacing damaged or outdated equipment at the Group's thermal power plants.

Notwithstanding its resilient financial performance and strong commitment in relation to its debt obligations, the terms of the Issuer's outstanding Notes have remained substantially unchanged since the 2021 restructuring. In particular, the limitations on indebtedness and restricted payments provisions in Sections 4.05 (Limitation on Indebtedness) and 4.06 (Limitation on Restricted Payments) of the Indenture contain restrictions on the ability of the Group to pay dividends and other distributions, make certain investments and to purchase, redeem or repay equity interests.

The Group's operating and strategic vision is to continue supporting Ukrainian energy system by generating as much electricity as necessary to meet the national demand, as well as providing balancing and other services. In line with this vision, the Group continues its repair campaign to fix or replace damaged or outdated equipment, which requires significant capital investments.

Accordingly, the Group is proposing to amend the Indenture to permit additional indebtedness and restricted payments under certain conditions, as further detailed below. The Group believes that an alignment of its covenant package under the Notes with its peers and covenant package of similarly rated issuers will strengthen its investment case, as well as improve its financial and operational flexibility for the making of its strategic investments.

In addition, as the Parent Guarantor, a holding company replaced DTEK Finance plc, a finance subsidiary on 25 November 2022 as the issuer of the Notes, the Parent Guarantor is requesting Consents to remove limitations on its activities in Section 4.10 of the Indenture (Limitations on Activities of the Issuer). Limitations on issuer's activities have been included in the Indenture because the Notes were originally issued by a finance subsidiary. These limitations may restrict the ability of the Parent Guarantor to engage in its ordinary course of business.

#### *Background and Rationale for the Tender Offer*

As announced in November 2022, the Group has completed a Discounted Notes Repurchase pursuant to Section 3.09(b) of the Indenture based on the daily average excess cash of approximately U.S.\$32.5 million during the first half of 2022. This excess cash amount has allowed the Group to repurchase approximately U.S.\$154 million in the nominal amount of Notes. The concluded repurchase process has demonstrated that there remained significant unfilled supply from the holders of the Notes. The Group also completed repurchases of Notes in the aggregate principal amounts of U.S.\$80,035,658 and U.S.\$193,532,850 pursuant to the Second and Third Repurchases.

The Group's management has carefully analysed current liquidity, near-term operational needs of the Group against its current and forthcoming receipts under accumulated accounts receivable for the past periods, the burden of further payments for the outstanding Notes, multiple risks and limitations on its trading and expenditures. Based on these considerations, management has come to the view that, under the current wartime conditions and volatile, inflationary macro-economic environment, it would be economically beneficial for both the Noteholders and the Group's overall financial performance to conduct additional repayments via an unmodified Dutch auction mechanism. The Tender Offer is structured as an unmodified Dutch auction, in a manner identical to the Discounted Notes Repurchase and the Second and Third Repurchases recently completed by the Group.

## **The Tender Offer**

### ***Purchase Price***

The price the Offeror will pay for the Notes validly tendered and accepted for purchase by the Offeror pursuant to the Tender Offer will be determined pursuant to the Unmodified Dutch Auction Procedure, as set out below.

Under the Unmodified Dutch Auction Procedure, the Purchase Price (specific to each Noteholder) in respect of the Notes validly tendered by a Noteholder and accepted for purchase by the Offeror pursuant to the Tender Offer shall be equal to the Submitted Purchase Price specified by the relevant Noteholder in the relevant Tender Instruction, subject to the Minimum Purchase Price and the Maximum Acceptance Amount, as more fully described below.

**As the Purchase Price applicable to each relevant Noteholder who submits a valid Tender Instruction that is accepted by the Offeror is the price specified by such Noteholder in the relevant Tender Instruction, the Purchase Price payable to each Noteholder will not necessarily be the same.**

### ***Total Amount Payable to Noteholders***

The total amount that will be due to each Noteholder on the Settlement Date for the Notes accepted for purchase from such Noteholder (the “**Total Payment Amount**”) will be an amount (rounded to the nearest U.S.\$0.01, with half a cent being rounded upwards) equal to the sum of:

- (i) the product of (x) the aggregate principal amount of the Notes of such Noteholder accepted for purchase pursuant to the Tender Offer and (y) the relevant Purchase Price, expressed as a percentage of the principal amount of the Notes (the “**Purchase Price Payment**”); and
- (ii) the Accrued Interest Payment on such Notes.

Each Purchase Price will be determined in the manner described in “*Purchase Price*” above.

The expected Settlement Date is after the Interest Payment Date falling on 30 September 2023. Accordingly, all Noteholders will receive the interest due and payable on 30 September 2023, and Noteholders who participate in the Tender Offer will additionally receive interest in respect of the principal amount of the Notes tendered by them which accrues from (and including) 30 September 2023 to (but excluding) the Settlement Date.

The determination of the Total Payment Amount by the Offeror will, in the absence of manifest error, be final and binding on the Offeror and the relevant Noteholder.

### ***Maximum Acceptance Amount***

The Offeror proposes to accept for purchase Notes such that the sum of all Purchase Price Payments equals to or is less than U.S.\$50,000,000, on the terms and subject to the conditions contained in this Tender Offer and Consent Solicitation Memorandum. The Offeror in its sole and absolute discretion may elect to change the Maximum Acceptance Amount. In the event of a change in the Maximum Acceptance Amount, the Tender Instructions submitted in the Tender Offer before the announcement of such change shall continue to be irrevocable. See “*Amendment and Termination*”.

### ***Submission of Tender Instructions by Noteholders***

In order to participate in, and be eligible to receive the relevant Purchase Price Payment and the Accrued Interest Payment pursuant to the Tender Offer, a Noteholder must validly tender its Notes by delivering, or arranging to have delivered on its behalf, a valid Tender Instruction that is received by the Tender and Tabulation Agent by the Expiration Deadline. See “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

A Noteholder may submit, or arrange to have submitted on its behalf, one or more Tender Instructions in respect of the Notes which such Noteholder holds prior to the Expiration Deadline, provided that the aggregate principal amount of Notes tendered does not exceed the aggregate principal amount of Notes which such Noteholder holds.

A Tender Instruction must specify:

- (i) the price, in increments of U.S.\$1 per U.S.\$1,000 in principal amount of the Notes, that is equal to or higher than the Minimum Purchase Price, that such Noteholder would be willing to accept as the Purchase Price in respect of the Notes that are the subject of the particular Tender Instruction(s) (the “**Submitted Purchase Price**”);
- (ii) the aggregate principal amount of the Notes, in increments of U.S.\$1 (subject to the Minimum Denomination) that the relevant Noteholder is tendering at that Submitted Purchase Price (the “**Submitted Purchase Amount**”); and
- (iii) such other information as is specified in “*Procedures for Participating in the Tender Offer or the Consent Solicitation*” below.

If a Tender Instruction specifies a Submitted Purchase Price that is not in whole increments of U.S.\$1 per U.S.\$1,000 in principal amount of the Notes, such Submitted Purchase Price will be rounded to the nearest U.S.\$1 increment.

**Tender Instructions shall be irrevocable unless the Tender Offer is terminated or as otherwise required by applicable law.**

#### ***Acceptance of Tender Instructions and Pro-Ration***

Provided that the Requisite Consents are obtained and the Proposed Amendments have become effective, the Offeror will accept Tender Instructions received by the Tender and Tabulation Agent by the Expiration Deadline, in the order (of the respective Submitted Purchase Price) starting from the lowest Submitted Purchase Price to any higher Submitted Purchase Price, up to and including the Submitted Purchase Price that represents highest price that yields an aggregate amount payable by the Offeror (calculated as the sum of all relevant Purchase Price Payments, subject to pro ration as set out below), in respect of all Tender Instructions with Submitted Purchase Prices at or below such price, that is equal to or less than the Maximum Acceptance Amount (such highest price referred to as the “**Highest Accepted Purchase Price**”).

If there is at least one Noteholder submitting a Tender Instruction, the Offeror will repurchase the outstanding Notes of each such Noteholder in the Submitted Purchase Amounts at the applicable Purchase Price; provided that if the sum of all Purchase Price Payments exceeds the Maximum Acceptance Amount then repurchase of the principal amount of the Notes for those Noteholders whose Submitted Purchase Price equals the Highest Accepted Purchase Price (the “**Pro-Rated Holders**”) shall be made *pro rata* among the Pro-Rated Holders in accordance with the respective Submitted Purchase Amounts submitted by such Pro-Rated Holders and the Tender and Tabulation Agent (in consultation with the Offeror and subject to rounding requirements of the Tender and Tabulation Agent made in its sole discretion) will calculate such pro-ration.

In the event such pro-ration is required, the Offeror shall announce the factor by which acceptances of the Notes of Pro-Rated Holders will be scaled down (the “**Scaling Factor**”). The principal amount of each validly tendered Note accepted for purchase will be determined by multiplying each Noteholder’s tender of the Notes by the Scaling Factor, and rounding the product down to the nearest U.S.\$1, subject to Minimum Denomination.

If the application of such Scaling Factor and rounding down would result in (i) the relevant Noteholder transferring Notes to the Offeror in an aggregate principal amount of less than the Minimum Denomination or (ii) the Notes in an aggregate principal amount of less than the Minimum Denomination being returned to the

relevant Noteholder, then the Offeror will, in its sole and absolute discretion, either reject all of the Notes tendered by such Noteholder or accept all of the Notes tendered by such Noteholder without scaling.

**Notwithstanding any other provision of the Tender Offer, Offeror's obligation to accept any Tender Instruction is conditional upon receipt of the Requisite Consents by the Issuer in the Consent Solicitation and the effectiveness of the Proposed Amendments.**

### ***Payment***

The aggregate amounts payable to Noteholders for such Notes in each Clearing System will be paid by the Offeror, in immediately available funds, by making the payment to the Paying Agent not later than 12:00 p.m. (London time) on the Settlement Date for payment to the cash accounts of the relevant Noteholders in such Clearing System (see "*Procedures for Participating in the Tender Offer or the Consent Solicitation*"). The payment of such aggregate amounts to the Clearing Systems by the Paying Agent will discharge the obligation of the Offeror and the Issuer to all such Noteholders in respect of the payment of the relevant Total Payment Amounts.

**Provided the Offeror makes, or has made on its behalf, full payment of the Total Payment Amounts for all Notes accepted for purchase pursuant to the Tender Offer to the Paying Agent on or before the Settlement Date, under no circumstances will any additional interest be payable to a Noteholder because of any delay in the transmission of funds from the Paying Agent, the relevant Clearing System or any other intermediary with respect to such Notes of that Noteholder.**

### ***Announcements***

Provided that the Requisite Consents are obtained and the Proposed Amendments have become effective, the Offeror and/or the Issuer will announce and disseminate to holders through the clearing systems, on or about 27 September 2023, as applicable:

- (i) the aggregate principal amount of the Notes which will be accepted for purchase pursuant to the Tender Offer;
- (ii) the sum of all Purchase Price Payments;
- (iii) the Highest Accepted Purchase Price;
- (iv) the Scaling Factor, if applicable, for Pro-Rated Holders; and
- (v) the expected date of payment (the "**Settlement Date**").

Unless stated otherwise, announcements in connection with the Tender Offer will be made by publication through the website of Euronext Dublin and by the delivery of notices to the Clearing Systems for communication to Direct Participants. Copies of all announcements, notices and press releases can also be obtained from the Tender and Tabulation Agent, whose contact details are on the last page of this Tender Offer and Consent Solicitation Memorandum. Significant delays may be experienced where notices are delivered to the Clearing Systems and Noteholders are urged to contact the Tender and Tabulation Agent for the relevant announcements during the course of the Tender Offer. In addition, Noteholders may contact the Tender and Tabulation Agent for information using the contact details on the last page of this Tender Offer and Consent Solicitation Memorandum.



## **The Consent Solicitation**

The Issuer is soliciting Consents from the holders of Notes to the Proposed Amendments. Noteholders may provide their Consents by submitting either a Tender Instruction, or, if they are unable or unwilling to tender their Notes in the Tender Offer, submitting a Consent Only Instruction.

**By submitting a Tender Instruction, a Noteholder will also provide a Consent for the approval of the Proposed Amendments in respect of the aggregate principal amount of the Notes tendered. A Consent by the Noteholders who submitted such Tender Instruction, even if such Tender Instruction is not accepted at all or is subject to pro-rata, will remain valid for purposes of the Consent Solicitation and will become binding and irrevocable as at the Effective Time.**

Consent Only Instructions delivered pursuant to the Consent Solicitation and Consents provided with the Tender Instructions shall become irrevocable at and after the Effective Time.

Subject to the satisfaction or waiver of the conditions to the Consent Solicitation, Noteholders who validly deliver their Consents at or prior to the Expiration Deadline and do not validly revoke their Consents prior to the Effective Time will be eligible to receive the Consent Consideration on the Settlement Date, which is an amount equal to 0.75 per cent. of the principal amount of Notes for which Consents have been delivered and accepted. For the avoidance of doubt, the Issuer's obligation to accept any validly delivered Consent and pay the Consent Consideration is conditional upon receipt of the Requisite Consents by the Issuer and the effectiveness of the Proposed Amendments.

## ***The Requisite Consents***

The Requisite Consents must be received in order to effect the Proposed Amendments in the manner contemplated by the Consent Solicitation as detailed below under the heading "*—The Proposed Amendments*".

If the Requisite Consents are delivered (and not revoked) by holders of Notes, the Tender and Tabulation Agent will certify that the Requisite Consents have been obtained and, provided that the other requirements of the Indenture are satisfied, the Issuer and the Trustee intend to execute the Supplemental Indenture promptly after the Effective Time (and in any event, no later than the Settlement Date) thereby implementing the Proposed Amendments. The Proposed Amendments contemplated in the Consent Solicitation will become effective upon execution of the Supplemental Indenture and all holders of Notes (including holders of Notes who do not deliver Consents) will be bound by the Indenture as amended by the Supplemental Indenture. The Indenture, without giving effect to the Proposed Amendments, will remain in effect until the Proposed Amendments become effective.

## ***The Proposed Amendments***

The Issuer proposes to (i) add the Restricted Payments basket in Section 4.06 (Limitation on Restricted Payments) of the Indenture, (ii) make certain amendments to the definition of "Asset Sale" in Section 1.01 of the Indenture and to Section 4.09 (Limitation on Affiliate Transactions) to permit Restricted Payments that do not violate Section 4.06 (Limitation on Restricted Payments) and Permitted Investments, (iii) allow for ability to Incur Indebtedness where the Consolidated Leverage Ratio does not exceed 2.5 to 1.0, (iv) amend the definition of "Permitted Lien" in Section 1.01 of the Indenture to allow for ability to incur certain Permitted Indebtedness on a secured basis, (v) make certain amendments to the definitions of "Asset Sale" and "Permitted Investments" in Section 1.01 of the Indenture to increase the amount available under the charitable and social initiatives basket, (vi) increase the threshold for obtaining a written opinion of Independent Appraiser, (vii) amend the definition of "Permitted Business" in Section 1.01 and Exhibit O of the Indenture to include sales and purchase of mine construction and other underground services, (viii) allow for a remedy period of 45 days for Events of Default related to breach of covenants, (ix) remove limitations on activities of the Issuer and (x)

permit business activities of certain Affiliates related to the development of certain battery energy storage systems (collectively, the “**Proposed Amendments**”), as set out in detail below. To implement the Proposed Amendments, the following changes shall be made to the Indenture:

- (a) The definition of “Asset Sale” in Section 1.01 of the Indenture is hereby amended by

a. replacing clause (2) with the following:

“(2) the sale or disposition of assets or cash with an aggregate Fair Market Value not exceeding \$50 million per annum (when taken together with any utilizations under clause (13) of the definition of “Permitted Investments”) consummated in each case for the purpose of allowing the Issuer or any Restricted Subsidiary to engage in charitable or other social initiatives, provided that, in no event shall dispositions of assets (other than non-core or obsolete assets pursuant to the foregoing) exceed an aggregate Fair Market Value of \$5 million per annum, and, provided further that, no sale or disposition of assets permitted by this clause (2) (or for the avoidance of doubt, any payments of cash or Cash Equivalents) shall be made with or to any Affiliate of the Parent Guarantor, Issuer or any Restricted Subsidiary.”

b. replacing “.” at the end of clause (11) thereof with “; and” and adding a new subparagraph thereafter as follows:

“(12) any Restricted Payment that does not violate Section 4.06 (Limitation on Restricted Payments) or a Permitted Investment.”

- (b) The definition of “Consolidated Net Income” in Section 1.01 of the Indenture is hereby amended by deleting “and” at the end of clause (8) thereof, replacing “.” at the end of clause (9) thereof with “;” and adding new subparagraphs thereafter as follows:

“(10) non-cash foreign exchange gains or losses;

(11) any property, plant and equipment impairment charge;

(12) any income or charge attributable to a post-employment benefit scheme other than the current service costs attributable to the scheme;

(13) the cumulative effect of a change in non-cash provision of expected credit losses required by applicable accounting policy, in each case, without duplication and solely to the extent increasing or decreasing Consolidated Net Income for such period and determined on a consolidated basis in accordance with IFRS for such period; and

(14) the cumulative effect of depreciation, amortisation and depletion during such period, without duplication and solely to the extent decreasing Consolidated Net Income for such period and determined on a consolidated basis in accordance with IFRS.”

- (c) The definition of “Consolidated Non-Cash Charges” in Section 1.01 of the Indenture is hereby amended and replaced with the following:

“**Consolidated Non-Cash Charges**” means, with respect to the Parent Guarantor for any period, the aggregate depreciation, amortization (including amortization of intangibles) and any other non-cash charges and expenses of the Parent Guarantor and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with IFRS.

- (d) The definition of “Permitted Business” in Section 1.01 of the Indenture is hereby amended and replaced with the following:

“**Permitted Business**” means the Future Business Lines and any business which is the same as any of the following businesses of the Parent Guarantor and Restricted Subsidiaries: (1) coal mining and related coal exploration and development, (2) heat and power generation, (3) machine building activities and mine construction services, (4) sales and purchases of mine construction and other underground services, in each case, directly relating to coal mining and (5) any business directly related to the business described in clauses (1), (2), (3) and (4) above.

- (e) The definition of “Permitted Investment” in Section 1.01 of the Indenture is hereby amended by replacing clause (13) with the following:

“(13) Investments or cash payments in an aggregate amount not to exceed \$50 million per annum (when taken together with any utilizations of clause (2) under the definition of “Asset Sale”) made for the purpose of engaging in charitable or other social initiatives;”

- (f) The definition of “Permitted Lien” in Section 1.01 of the Indenture is hereby amended by replacing clause (18) with the following:

“(18) any Lien securing Indebtedness under the first paragraph of Section 4.05, clauses (j), (k), (l) or (m) of the second paragraph of Section 4.05 or Permitted Excluded Facility Roll-over Indebtedness (as defined in Section 4.05(d)); provided that, the aggregate book value of the assets (as reflected in the audited consolidated balance sheet for the Parent Guarantor as of the end of the most recent fiscal year or, if any such assets have been acquired since the date of such balance sheet, the cost of such acquired assets) subject to Liens incurred or existing pursuant to this clause (18) does not in the aggregate exceed 200.0% of the aggregate principal amount of Indebtedness secured by such Liens;”

- (g) Section 1.01 of the Indenture is hereby amended by adding the definitions of “Permitted Transactions” and “Relevant Period” as follows:

“**Permitted Transactions**” means any business activities of a Subsidiary or an Affiliate of DTEK Group B.V. (formerly DTEK B.V.) that utilize the assets of the Group, including, but not limited to, leasing land plots and/or points of interconnections, providing access to powerplant dispatch and control systems, or undertaking maintenance and operation services, in each case, on arm’s length terms and in relation to battery energy storage systems.

“**Relevant Period**” means the most recently ended two semi-annual periods for which financial statements have been provided to the Trustee pursuant to Section 4.16 (Reports to Holders).

- (h) Section 4.05 of the Indenture (Limitation on Indebtedness) is hereby amended by

a. replacing the first paragraph thereof in its entirety with the following:

“The Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (individually and collectively, to “**Incur**”) any Indebtedness (including Acquired Debt), provided that the Parent Guarantor or any other Guarantor may incur Indebtedness if on the date of such Incurrence and after giving effect thereto on a pro forma basis (including a pro forma application of the net proceeds therefrom), the Consolidated Leverage Ratio does not exceed 2.5 to 1.0.”

b. deleting “and” at the end of clause (k) thereof, replacing “.” at the end of clause (l) thereof with “; and” and adding a new subparagraph thereafter as follows:

“(m) the loan(s) in the aggregate amount of UAH 5.2 billion for the purposes of repairing and replacing damaged or outdated equipment, as well as supporting repair work of the Group’s assets that were damaged by shelling.”

- (i) Section 4.06 of the Indenture (Limitation on Restricted Payments) is hereby amended by replacing the first paragraph thereof in its entirety with the following:

“The Parent Guarantor will not, and will not permit any Restricted Subsidiary, directly or indirectly, to:

(a) declare or pay any dividend or make any other payment or distribution on account of the Parent Guarantor’s or any Restricted Subsidiaries’ Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Parent Guarantor or any Restricted Subsidiary) or to the direct or indirect holders of Equity Interests of the Parent Guarantor or any Restricted Subsidiary in their capacity as such, in each case, other than dividends, payments or distributions payable to the Issuer, Parent Guarantor or any Subsidiary Guarantor;

(b) purchase, redeem, defease or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Parent Guarantor or any Restricted Subsidiary) any Equity Interests of the Parent Guarantor or any Restricted Subsidiary (other than, in each case, any such Equity Interests owned by the Issuer, Parent Guarantor or any Subsidiary Guarantor);

(c) purchase, repurchase, redeem, defease, set-off or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Indebtedness (other than (A) any intercompany Indebtedness between or among Parent Guarantor, the Issuer and any Subsidiary Guarantor or (B) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(d) make any Restricted Investment;

(all such payments and other actions set forth in clauses (a) through (d) of this paragraph being collectively referred to as “**Restricted Payments**”), so long as there remains any principal amount outstanding under any of the Notes or any other obligation or amount outstanding hereunder or thereunder, unless, at the time and after giving effect to such Restricted Payment,

- (1) no Default or an Event of Default shall have occurred and be continuing (or would result therefrom);
- (2) the Parent Guarantor would, at the time of such Restricted Payment and after giving *pro forma* effect thereto as if such Restricted Payment had been made at the beginning of the Relevant Period, have been permitted to Incur an additional \$1.00 of Indebtedness pursuant to the first paragraph of Section 4.05 (Limitation on Indebtedness); and
- (3) (a) on a pro forma basis, the Consolidated Leverage Ratio would be 1.0 to 1.0 or lower or (b) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent Guarantor and its Restricted Subsidiaries since the Issue Date (excluding Restricted Payments permitted by the second paragraph of this Section 4.06), would not exceed the sum of (without duplication):
- (A) (i) 50% of the Consolidated Net Income; or (ii) if the Consolidated Leverage Ratio for the Relevant Period prior to such Restricted Payment does not exceed 2.0 to 1.0 on a pro forma

basis after giving effect to any such Restricted Payment and any related transaction, 75% of the Consolidated Net Income; or (iii) if the Consolidated Leverage Ratio for the Relevant Period prior to such Restricted Payment does not exceed 1.5 to 1.0 on a pro forma basis after giving effect to any such Restricted Payment and any related transaction, 100% of the Consolidated Net Income, in each case, accrued during the period (treated as one accounting period) beginning on January 1, 2022 and ending at the end of the most recent six-month period for which financial statements have been provided under Section 4.16 (Reports to Holders) prior to the date of such Restricted Payment (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit);

- (B) 100% of the aggregate net cash proceeds received by the Parent Guarantor since January 1, 2022 from the issuance or sale of its Capital Stock (other than Disqualified Stock) (other than an issuance or sale to a Subsidiary of the Parent Guarantor and other than an issuance or sale to an employee stock ownership plan or to a trust established by the Parent Guarantor or any of its Subsidiaries for the benefit of their employees) or capital contribution received by the Parent Guarantor;
  - (C) 100% of the aggregate net cash proceeds and the Fair Market Value of property or assets or marketable securities received by the Parent Guarantor since January 1, 2022 from the issue or sale by the Parent Guarantor or any Restricted Subsidiary subsequent to January 1, 2022 of any Indebtedness that has been converted into or exchanged for Capital Stock of the Parent Guarantor (other than Capital Stock and convertible or exchangeable Disqualified Stock or debt securities sold to a Subsidiary of the Parent Guarantor);
  - (D) to the extent that any Restricted Investment that was made after January 1, 2022 is (a) sold, disposed of or otherwise cancelled, liquidated or repaid, 100% of the aggregate amount received in cash and the Fair Market Value of the property or assets or marketable securities received by the Parent Guarantor or any Restricted Subsidiary (other than from a Person that is the Parent Guarantor or a Restricted Subsidiary), or (b) made in an entity that subsequently becomes a Restricted Subsidiary, 100% of the Fair Market Value of the Restricted Investment of the Parent Guarantor and its Restricted Subsidiaries as of the date such entity becomes a Restricted Subsidiary; and
  - (E) to the extent that any Unrestricted Subsidiary of the Parent Guarantor designated as such after the Issue Date is redesignated as a Restricted Subsidiary or is merged or consolidated into the Parent Guarantor or a Restricted Subsidiary, or all of the assets of such Unrestricted Subsidiary are transferred to the Parent Guarantor or a Restricted Subsidiary, the Fair Market Value of the property received by the Parent Guarantor or the Restricted Subsidiary or the Parent Guarantor's Restricted Investment in such Subsidiary as of the date of such redesignation, merger, consolidation or transfer of assets, to the extent such Investments reduced the Restricted Payments capacity under this clause (E) and were not previously repaid or otherwise reduced."
- (j) The first paragraph of Section 4.09 of the Indenture (Limitation on Affiliate Transaction) is hereby amended by replacing clauses (b) and (c) with the following:

"(b) with respect to any Affiliate Transaction or series of related or similar Affiliate Transactions by the Parent Guarantor or any Restricted Subsidiary involving aggregate consideration equal to or in excess of \$2 million but less than \$10 million, the Parent Guarantor delivers to the Trustee:

- (i) a Director's Certificate certifying that such transaction or transactions comply with clause (a) above; and
  - (ii) a copy of the Qualified Resolution approving such transaction or transactions; and
- (c) with respect to any Affiliate Transaction or series of related or similar Affiliate Transactions by the Parent Guarantor or any Restricted Subsidiary involving aggregate consideration equal to or in excess of \$10 million but less than \$25 million, the Parent Guarantor delivers to the Trustee:
  - (i) a Director's Certificate certifying that such transaction or transactions comply with clause (a) above;
  - (ii) a copy of the Qualified Resolution approving such transaction or transactions; and
  - (iii) a written opinion issued by an Independent Appraiser that such Affiliate Transaction is fair to the Parent Guarantor or the relevant Restricted Subsidiary from a financial point of view."
- (k) The second paragraph of Section 4.09 of the Indenture (Limitation on Affiliate Transaction) is hereby amended by replacing the "." at the end of clause (f) thereof with "; and" and adding a new subparagraph thereafter as follows:
 

"(g) any Restricted Payment that does not violate Section 4.06 (Limitation on Restricted Payments) or a Permitted Investment."
- (l) Section 4.10 of the Indenture (Limitations on Activities of the Issuer) is hereby deleted, and the section heading is replaced with the following:
 

"Section 4.10 [Intentionally Left Blank]"
- (m) Section 4.24 of the Indenture (Business Activities) is hereby amended by adding a new paragraph at the end of the section, as follows:
 

"Notwithstanding any other provision of this Section 4.24, the first paragraph of this Section 4.24 will not prohibit any Permitted Transaction."
- (n) Section 6.01 of the Indenture (Events of Default) is hereby amended by
  - a. replacing clause (c) thereof with the following:
 

"(c) (i) failure to comply with Section 5.01 or (ii) failure to comply with any section or covenant under Article 4, in each case, for 45 days after the earlier of (i) the date upon which written notice thereof is given to the Issuer by the Trustee or (ii) the date on which any Officer of the Issuer, Holdco Guarantor, Parent Guarantor or any Restricted Subsidiary acquires actual knowledge of such default;"
  - b. amending clause (d) thereof by replacing "30 days" with "45 days".
- (o) Exhibit O of the Indenture is hereby amended by adding the following:
 

"8. Sales and purchases of mine construction and other underground services."

The foregoing summary does not purport to be comprehensive or definitive and is qualified in its entirety by reference to the form of the Supplemental Indenture attached as Annex A to this Tender Offer and Consent Solicitation Memorandum.

The Proposed Amendments require the Requisite Consents to be obtained. Once the Requisite Consents have been received, the Proposed Amendments will be binding on all holders of Notes, including those that did not give Consents. In order for the Proposed Amendments to become effective, the Issuer and the Trustee intend to execute the Supplemental Indenture promptly after the Effective Time but no later than the Settlement Date.

### ***Announcements***

The Issuer is expected to make a public announcement of receipt of the Requisite Consents as soon as reasonably practicable after the Effective Time. The Effective Time may fall before, at or after the Expiration Deadline.

Unless stated otherwise, announcements in connection with the Consent Solicitation will be made by publication through the website of Euronext Dublin and by the delivery of notices to the Clearing Systems for communication to Direct Participants. Copies of all announcements, notices and press releases can also be obtained from the Tender and Tabulation Agent, whose contact details are on the last page of this Tender Offer and Consent Solicitation Memorandum. Significant delays may be experienced where notices are delivered to the Clearing Systems and Noteholders are urged to contact the Tender and Tabulation Agent for the relevant announcements during the course of the Consent Solicitation. In addition, Noteholders may contact the Tender and Tabulation Agent for information using the contact details on the last page of this Tender Offer and Consent Solicitation Memorandum.

### **Conditions of the Tender Offer and the Consent Solicitation**

Notwithstanding any other provision of the Tender Offer or the Consent Solicitation, and in addition to (and not in limitation of) any of the other conditions, the Offeror's right to extend, amend, waive any condition of and/or terminate the Tender Offer and the Issuer's right to extend, amend, waive any condition of and/or terminate the Consent Solicitation, subject to applicable law and as provided in this Tender Offer and Consent Solicitation Memorandum, the Offeror shall not be required to accept for purchase, purchase or pay for, and may delay the acceptance for purchase of, any tendered Notes and the Issuer shall not be required to accept any Consent or pay Consent Consideration, and may terminate the Tender Offer or Consent Solicitation, respectively, if, at or prior to the Expiration Deadline, any of the following events or conditions exist or shall occur and remain in effect or shall be determined by the Offeror or the Issuer in its reasonable judgment to exist or have occurred:

- there shall have occurred (i) any general suspension of trading in, or limitation on prices for, securities or financial markets in the United States, European Union (the "EU"), the United Kingdom or Ukraine, (ii) a material impairment in the trading market for debt, (iii) a declaration of a banking moratorium or any suspension of payments in respect of banks in the United States, any member state of the EU, the United Kingdom or Ukraine (whether or not mandatory), (iv) any limitation (whether or not mandatory) by any governmental authority on, or other event having a reasonable likelihood of affecting, the extension of credit by banks or other lending institutions in the United States, the EU, the United Kingdom or Ukraine, (v) a material escalation or deterioration of the military situation in Ukraine that affects the Group's business or prospects in a manner not currently anticipated, or (vi) any significant adverse change in securities or financial markets generally in the United States, the EU, the United Kingdom or Ukraine;
- there exists, or have been instituted, threatened or be pending (1) an order, statute, rule, regulation, executive order, stay, decree, judgment or injunction that shall have been enacted, entered, issued,

promulgated, enforced or deemed applicable by any court or governmental, regulatory or administrative agency or instrumentality, (2) any action, proceeding or investigation (whether formal or informal), or there shall have been any material adverse development with respect to any action or proceeding currently instituted, threatened or pending before or by any court, governmental, regulatory or administrative agency or instrumentality, or by any other person that challenges the making of the Tender Offer or the Consent Solicitation or (3) any other actual or threatened legal impediment to the Tender Offer or the Consent Solicitation or any other circumstances that would materially adversely affect the transactions contemplated by the Tender Offer or the Consent Solicitation or the contemplated benefits of the Tender Offer or the Consent Solicitation to the Group;

- any trustee or agent pursuant to any applicable indenture or agreement which governs the Notes, shall have objected in any respect to or taken any action that would be likely, in the Issuer's or the Offeror's reasonable judgment, to materially and adversely affect the Tender Offer or the Consent Solicitation or shall have taken any action that challenges the validity or effectiveness of the procedures used by the Offeror in making the Tender Offer or the Issuer in making the Consent Solicitation or the acceptance of, or payment for, the Notes tendered pursuant to the Tender Offer or the implementation of the Proposed Amendments; or
- there shall have occurred or be likely to occur any development which would, in the judgment of the Issuer or the Offeror, materially adversely affect the Group's business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects.

The conditions described above are solely for the benefit of the Issuer and the Offeror, and may be asserted by the Issuer or the Offeror regardless of the circumstances giving rise to any such condition, and, where possible, may be waived by the Issuer or the Offeror, in whole or in part, at any time and from time to time at or before the Expiration Deadline. Any failure by the Issuer or the Offeror at any time to exercise any of its rights will not be deemed a waiver of any other right, and each right will be deemed an ongoing right which may be asserted at any time and from time to time.

#### ***General Conditions of the Tender Offer and the Consent Solicitation***

The Tender Offer and the Consent Solicitation will expire at the Expiration Deadline.

In all cases, the purchase of Notes for cash pursuant to the Tender Offer and the acceptance of any Consent Only Instruction will only be made after the submission of a valid Tender Instruction or Consent Only Instruction, as the case may be, in accordance with the procedures described in "*Procedures for Participating in the Tender Offer or the Consent Solicitation*", which include the blocking of the Notes in the relevant account in the relevant Clearing System as described in "*Risk Factors and Other Considerations—Restrictions on Transfer of Notes*".

The Offeror is not under any obligation to accept any tender of Notes for purchase pursuant to the Tender Offer and the Issuer is not under any obligation to accept any of the Consents and pay Consent Consideration for Consents validly delivered at or prior to the Expiration Deadline. Tenders of Notes for purchase and Consent Only Instructions may be rejected in the sole and absolute discretion of the Offeror and the Issuer, respectively, for any reason and the Offeror and the Issuer are not under any obligation to Holders to furnish any reason or justification for refusing to accept a tender of Notes for purchase or a Consent Only Instruction. For example, tenders of Notes for purchase may be rejected if the Tender Offer is terminated, if the Tender Offer does not comply with the relevant requirements of a particular jurisdiction or for any other reason.

The Offeror expressly reserves the right, in its sole and absolute discretion, to delay the acceptance of Notes tendered pursuant to the Tender Offer in order to comply with applicable laws. Notwithstanding the foregoing,



the Offeror will at all times have the discretion to accept for purchase any Notes tendered in the Tender Offer, the tender of which would otherwise be invalid or, in the sole opinion of the Offeror, may otherwise be invalid.

Notes that are not successfully tendered for purchase pursuant to the Tender Offer will remain outstanding.

The failure of any person to receive a copy of this Tender Offer and Consent Solicitation Memorandum or any announcement made or notice issued in connection with the Tender Offer or the Consent Solicitation will not invalidate any aspect of the Tender Offer or the Consent Solicitation. No acknowledgement of receipt of any Tender Instruction, Consent Only Instructions and/or other documents will be given by the Offeror, the Issuer or the Tender and Tabulation Agent.

The Offeror may, in its sole and absolute discretion, extend, amend, waive any condition of and/or terminate the Tender Offer and the Issuer may, in its sole and absolute discretion, extend, amend, waive any condition of and/or terminate the Consent Solicitation (subject to applicable law and as provided in this Tender Offer and Consent Solicitation Memorandum). Details of any such extension, amendment, waiver or termination will be announced as provided in this Tender Offer and Consent Solicitation Memorandum as soon as reasonably practicable after the relevant decision is made. See “*Amendment and Termination*”.

In the event that the Consent Solicitation is terminated or otherwise not completed, the Consent Consideration will not be paid or become payable to Noteholders who have validly delivered Consents in connection with the Consent Solicitation. In any such event, the Proposed Amendments will not become effective. See “*Amendment and Termination*”.

#### ***Governing Law and Submission to Jurisdiction***

The Tender Offer, the Consent Solicitation, each Tender Instruction and any purchase of Notes and each Consent Only Instruction pursuant to the Tender Offer and the Consent Solicitation, respectively, and any non-contractual obligations arising out of or in connection with the Tender Offer or the Consent Solicitation, will be governed by and construed in accordance with the laws of the state of New York. By submitting a Tender Instruction or Consent Only Instruction, as the case may be, the relevant Noteholder irrevocably and unconditionally agrees for the benefit of the Offeror, the Issuer and the Tender and Tabulation Agent that the Supreme Court of the State of New York, sitting in New York County, the United States District Court of the Southern District of New York and/or any appellate court from any thereof are to have jurisdiction to settle any disputes that may arise out of or in connection with the Tender Offer or the Consent Solicitation or such Tender Instruction or Consent Only Instruction, as the case may be, and that, accordingly, any suit, action or proceedings arising out of or in connection with the foregoing may be brought in such courts.

#### ***Costs and Expenses***

Any charges, costs and expenses incurred by the Noteholders or any intermediary in connection with the Tender Offer and the Consent Solicitation shall be borne by such Noteholder. Noteholders should check whether their brokers, custodians or other intermediaries will assess fees.

## **RISK FACTORS AND OTHER CONSIDERATIONS**

*Before making a decision whether to tender Notes pursuant to the Tender Offer or to provide Consent pursuant to the Consent Solicitation, Noteholders should carefully consider all of the information in this Tender Offer and Consent Solicitation Memorandum and, in particular, the following factors. The Offeror and the Issuer believe that the factors described below represent the principal risks inherent in the Tender Offer or the Consent Solicitation, but the Tender Offer or the Consent Solicitation may imply other risks which may not be considered significant risks by the Offeror or the Issuer based on information currently available to it or which it may not currently be able to anticipate.*

### **The changes to the Indenture pursuant to the Proposed Amendments may be adverse to the interests of Noteholders**

Pursuant to the Proposed Amendments, the Issuer proposes to, among others, (i) add the Restricted Payments basket in Section 4.06 (Limitation on Restricted Payments) of the Indenture, (ii) make certain amendments to the definition of “Asset Sale” in Section 1.01 of the Indenture and to Section 4.09 (Limitation on Affiliate Transactions) to permit Restricted Payments that do not violate Section 4.06 (Limitation on Restricted Payments) and Permitted Investments, (iii) allow for ability to Incur Indebtedness where the Consolidated Leverage Ratio does not exceed 2.5 to 1.0, (iv) amend the definition of “Permitted Lien” in Section 1.01 of the Indenture to allow for ability to incur certain Permitted Indebtedness on a secured basis and (v) make certain amendments to the definitions of “Asset Sale” and “Permitted Investments” in Section 1.01 of the Indenture to increase the amount available under the charitable and social initiatives basket.

If the Proposed Amendments are implemented, the Issuer will be able to make Restricted Payments, incur additional Indebtedness and enter into transactions with Affiliates on less restrictive terms than is the case in the existing Indenture, which may in the future affect its financial position and its ability to repurchase the Notes in compliance with the Indenture.

### **If the Requisite Consents are obtained and the Proposed Amendments become effective, the Proposed Amendments and will be binding on all Noteholders, including those Noteholders who do not provide Consent**

If the Requisite Consents are obtained and the Proposed Amendments become effective, all Noteholders will be bound by them (on the terms set forth in this Tender Offer and Consent Solicitation Memorandum) including Noteholders who do not deliver Consents pursuant to the Consent Solicitation. Non-Consenting Noteholders will not be entitled to any rights of appraisal or similar rights of dissenters with respect to the adoption of the Proposed Amendments.

### **Completion, Termination and Amendment**

Subject to applicable law and as provided in this Tender Offer and Consent Solicitation Memorandum, the Offeror may, in its sole discretion, extend, amend and/or terminate the Tender Offer at any time before any acceptance by it of the Notes tendered for purchase in the Tender Offer and may, in its sole discretion, waive any of the conditions to the Tender Offer at any time.

The Consent Solicitation depends upon receipt of the Requisite Consents. Subject to applicable law, the provisions of the Indenture and as provided in this Tender Offer and Consent Solicitation Memorandum, the Issuer may, in its sole and absolute discretion, extend, amend and/or terminate, or waive any of the conditions of, the Consent Solicitation at any time.

### **Tender Instructions Irrevocable**

Tender Instructions submitted by Noteholders will be irrevocable and may not be amended or withdrawn unless required by applicable law.

### **Consents Irrevocable at and after the Effective Time**

Consents (including Consents provided with the Tender Instructions) may be validly revoked at any time prior to the Effective Time, but not thereafter, unless required by applicable law.

### **No Assurance of an “Exit Consent”**

By submitting a Tender Instruction, a Noteholder will also provide a Consent for the approval of the Proposed Amendments in respect of the aggregate principal amount of the Notes tendered. However, there can be no assurance that the Tender Instruction so submitted will be accepted by the Offeror in full or at all. A Consent by the Noteholders who submitted such Tender Instruction, even if such Tender Instruction is not accepted at all or is subject to pro-rata, will remain valid for purposes of the Consent Solicitation and will become binding and irrevocable as at the Effective Time.

### **The Purchase Price payable to each Noteholder will not be the same**

As the relevant Purchase Price applicable to each Noteholder who submits a valid Tender Instruction that is accepted by the Offeror will be the particular Submitted Purchase Price specified by such Noteholder in the relevant Tender Instruction, the Purchase Price payable to each Noteholder will not be the same.

### **Responsibility for Complying with the Procedures of the Tender Offer and the Consent Solicitation**

Noteholders are responsible for complying with all of the procedures for tendering Notes pursuant to the Tender Offer (including the submission of Tender Instructions) and for providing Consent pursuant to the Consent Solicitation (including the delivery of Consent Only Instructions). None of the Offeror, the Issuer or the Tender and Tabulation Agent assumes any responsibility for informing any Noteholder of irregularities with respect to such Noteholder's participation in the Tender Offer or the Consent Solicitation including any errors or other irregularities, manifest or otherwise, in any Tender Instruction or Consent Only Instruction.

If Notes are held through a broker, dealer, commercial bank, trust company or other nominee, such entity may require the relevant Noteholder to take action with respect to the Tender Offer or the Consent Solicitation a number of days before the deadline specified in this Tender Offer and Consent Solicitation Memorandum in order for such entity to tender Notes or provide or withdraw Consent on behalf of the relevant Noteholder.

### **Compliance with Offer, Solicitation and Distribution Restrictions**

Noteholders are referred to the offer, solicitation and distribution restrictions in “*Offer, Solicitation and Distribution Restrictions*” and the agreements, acknowledgements, representations, warranties and undertakings in “*Procedures for Participating in the Tender Offer or the Consent Solicitation – Agreement, Acknowledgements, Representations, Warranties and Undertakings of the Noteholders*”, which each Noteholder will be deemed to make on submission of a Tender Instruction or delivery of a Consent Only Instruction. Non-compliance with these could result in, among other things, the unwinding of trades and/or heavy penalties.

## **Responsibility to Consult Advisers**

Each Noteholder is solely responsible for making its own independent appraisal of all matters as such Noteholder deems appropriate (including those relating to the Tender Offer, the Consent Solicitation, this Tender Offer and Consent Solicitation Memorandum, the Offeror and the Issuer) and each Noteholder must make its own decision as to whether to tender any or all of its Notes for purchase pursuant to the Tender Offer or to provide its Consent pursuant to the Consent Solicitation.

Noteholders should consult their own tax, accounting, financial and legal advisers regarding the suitability to themselves of the tax or accounting consequences of participating in the Tender Offer and/or the Consent Solicitation. None of the Offeror, the Issuer, the Tender and Tabulation Agent or the Trustee has made or will make any assessment of the merits of the Tender Offer or the Consent Solicitation or of the impact of the Tender Offer or the Consent Solicitation on the interests of Noteholders either as a class or as individuals. Noteholders are liable for their own taxes and have no recourse to the Offeror, the Issuer, the Tender and Tabulation Agent or the Trustee with respect to taxes arising in connection with the Tender Offer or the Consent Solicitation.

None of the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any of their respective directors, officers, employees, agents or affiliates, is acting for any Noteholder, or will be responsible to any Noteholder for providing any protections which would be afforded to its clients or for providing advice in relation to the Tender Offer or the Consent Solicitation, and accordingly none of the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any of their respective directors, officers, employees, agents or affiliates, makes any recommendation as to whether or not Noteholders should tender their Notes in the Tender Offer or otherwise participate in the Consent Solicitation.

## **Restrictions on Transfer of Notes**

When considering whether to participate in the Tender Offer, Noteholders whose Notes are held through Euroclear or Clearstream, Luxembourg, should take into account that restrictions on the transfer of Notes by Noteholders will apply from the time of submission of Tender Instructions. A Noteholder will, on submitting a Tender Instruction, be deemed to agree that its Notes will be blocked in the relevant account in the relevant Clearing System from the date the relevant Tender Instruction is submitted until the earlier of (i) the time of settlement on the Settlement Date and (ii) the date of any termination of the Tender Offer (including where such Notes are not accepted by the Offeror for purchase).

When considering whether to participate in the Consent Solicitation, Noteholders should take into account that restrictions on the transfer of the Notes by them will apply from the time of delivery of the relevant Consent Only Instruction. A Noteholder will, by delivering a Consent Only Instruction, be deemed to agree that its Notes will be blocked in the relevant account in the relevant Clearing System from the date of delivery of such Consent Only Instruction until the earlier of the time of (i) the occurrence of the Effective Time, (ii) the termination of the Consent Solicitation and (iii) revocation of the Consent Only Instruction in the limited circumstances in which such revocation is permitted.

## **Costs Incurred in Processing Instructions and Blocking the Notes**

Any fees, if any, which may be charged by the relevant Clearing System to the Direct Participant in connection with the processing instructions and blocking (or unblocking) of the Notes or otherwise (including, without limitation in connection with an amendment of the Tender Offer by the Offeror or an amendment of the Consent Solicitation by Issuer) must be borne by the Direct Participant or as otherwise agreed between the Direct Participant and the Noteholder. For the avoidance of doubt, Direct Participants and Noteholders shall have no

recourse to the Offeror, the Issuer or the Tender and Tabulation Agent with respect to such costs or any other costs or expenses.

### **Submission of Tender Instructions or Delivery of Consent Only Instructions by Sanctions Restricted Persons will not be Accepted**

A Noteholder who is a Sanctions Restricted Person may not participate in the Tender Offer or the Consent Solicitation. No Notes purported to be tendered by a Sanctions Restricted Person pursuant to this Tender Offer and Consent Solicitation Memorandum will be accepted for purchase and no Sanctions Restricted Person will be eligible to receive any monetary amount in respect of any Purchase Price or Accrued Interest under any circumstances. No Consents provided by a Sanctions Restricted Person will be accepted by the Issuer and no Sanctioned Restricted Person will be eligible to receive Consent Consideration under any circumstances. The Offeror and the Issuer, in their discretion, reserve the absolute right not to accept the tender of any Notes or the Consent provided by a person whom they have reason to believe is or may be a Sanctions Restricted Person. By submitting a valid Tender Instruction or Consent Only Instruction to the relevant Clearing System in accordance with the standard procedures of such Clearing System, the relevant Noteholder and any Direct Participant submitting such Tender Instruction or Consent Only Instruction on such Noteholder's behalf shall be deemed to agree to, acknowledge, represent, warrant and undertake to the Offeror, the Issuer, the Tender and Tabulation Agent and the Trustee that they are not a Sanctions Restricted Person. The restrictions described in this paragraph shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of (i) the EU Blocking Regulation and/or any law or regulation implementing the EU Blocking Regulation in any member state of the European Union or (ii) any similar and applicable anti-blocking law in the United Kingdom (including the EU Blocking Regulation as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018).

### **No Indication of Future Intentions of the Offeror or the Issuer**

The making of the Tender Offer by the Offeror and the making of the Consent Solicitation by the Issuer should not be taken as any indication of any future intentions of the Offeror or the Issuer with respect to the Notes.

### **Taxation Consequences**

There may be taxation consequences for Noteholders in tendering Notes in the Tender Offer or delivering Consents pursuant to the Consent Solicitation. Each Noteholder is urged to consult its own professional advisers regarding these possible tax consequences under the laws of the jurisdictions that apply to it, to the sale of its Notes and its receipt of the relevant Purchase Price Payment and the Accrued Interest Payment in respect of Notes validly tendered by it and accepted for purchase by the Offeror or to its receipt of the Consent Consideration in respect of the Consents validly delivered by it and accepted by the Issuer.

### **Minimum Denomination of Notes**

The Notes have the Minimum Denomination of U.S.\$2,000. A Noteholder whose Notes are accepted for purchase pursuant to the Tender Offer and who, following purchase of the Notes on the Settlement Date, continues to hold in its account with the relevant Clearing System further Notes in an aggregate principal amount of less than the Minimum Denomination, would need to purchase a principal amount of Notes such that its holding amounts to at least the Minimum Denomination before (i) the Notes it continues to hold may be traded in the Clearing Systems or (ii) it may receive a definitive Note in respect of such holding (should definitive Notes be printed).

## **TAX CONSEQUENCES**

**IN VIEW OF THE NUMBER OF DIFFERENT JURISDICTIONS WHERE TAX LAWS MAY APPLY TO A NOTEHOLDER, THIS TENDER OFFER AND CONSENT SOLICITATION MEMORANDUM GENERALLY DOES NOT DISCUSS THE TAX CONSEQUENCES FOR NOTEHOLDERS ARISING FROM THE PURCHASE OF NOTES BY THE OFFEROR PURSUANT TO THE TENDER OFFER OR ACCEPTANCE OF CONSENTS AND PAYMENT OF CONSENT CONSIDERATION BY THE ISSUER PURSUANT TO THE CONSENT SOLICITATION. NOTEHOLDERS ARE URGED TO CONSULT THEIR OWN PROFESSIONAL ADVISERS REGARDING THESE POSSIBLE TAX CONSEQUENCES UNDER THE LAWS OF THE JURISDICTIONS THAT APPLY TO THEM, TO THE SALE OF THEIR NOTES AND THE RECEIPT PURSUANT TO THE TENDER OFFER OF THE PURCHASE PRICE PAYMENTS AND THE ACCRUED INTEREST PAYMENTS AND/OR RECEIPT PURSUANT TO CONSENT SOLICITATION OF THE CONSENT CONSIDERATION OR TO THE PROVISION OF CONSENTS. NOTEHOLDERS ARE LIABLE FOR THEIR OWN TAXES AND HAVE NO RECOURSE TO THE OFFEROR, THE ISSUER, THE TENDER AND TABULATION AGENT OR THE TRUSTEE WITH RESPECT TO TAXES ARISING IN CONNECTION WITH THE TENDER OFFER OR THE CONSENT SOLICITATION.**

## **PROCEDURES FOR PARTICIPATING IN THE TENDER OFFER OR THE CONSENT SOLICITATION**

*Noteholders who need assistance with respect to the procedures for participating in the Tender Offer or the Consent Solicitation should contact the bank, securities broker or other clearing system participant through which they hold the Notes or they may contact the Tender and Tabulation Agent whose contact details are on the last page of this Tender Offer and Consent Solicitation Memorandum.*

### **General**

The Offeror will only accept tenders of Notes for purchase pursuant to the Tender Offer which are made by way of the submission of valid Tender Instructions in accordance with the procedures set out in this section “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

The Issuer will only accept Consents in respect of the Consent Solicitation which are provided through the delivery of valid Consent Only Instructions in accordance with the procedures set out in this section “*Procedures for Participating in the Tender Offer or the Consent Solicitation*”.

To tender Notes for purchase in the Tender Offer, a Noteholder should deliver, or arrange to have delivered on its behalf, via the relevant Clearing System and in accordance with the requirements of such Clearing System, a valid Tender Instruction that is received by the Tender and Tabulation Agent by the Expiration Deadline.

Any Noteholder who does not wish, or who is not able, to tender its Notes for purchase pursuant to the Tender Offer but who wishes to participate in the Consent Solicitation, should deliver, or arrange to have delivered on its behalf, via the relevant Clearing System and in accordance with the requirements of such Clearing System, a valid Consent Only Instruction that is received by the Tender and Tabulation Agent by the Expiration Deadline.

Only a Direct Participant in a Clearing System can properly instruct that Clearing System with regard to submitting Tender Instructions or Consent Only Instructions. In so instructing, the Direct Participant and the Noteholder on whose behalf it is acting, will be deemed to have read and agreed to be bound by the terms and conditions of the Tender Offer or the Consent Solicitation contained in this Tender Offer and Consent Solicitation Memorandum.

If a Noteholder holds its Notes through a custodian or other intermediary, such Noteholder may not submit a Tender Instruction or a Consent Only Instruction directly. It should therefore contact its custodian or other intermediary to instruct its custodian or intermediary to submit a Tender Instruction or Consent Only Instruction on its behalf. In the event that the relevant custodian or intermediary is unable to submit a Tender Instruction or Consent Only Instruction on its behalf, the Noteholder should contact the Tender and Tabulation Agent for assistance in submitting its Tender Instruction or Consent Only Instruction. There can be no assurance that the Tender and Tabulation Agent will be able to assist any such Noteholders in successfully submitting a Tender Instruction or Consent Only Instruction.

Noteholders are urged to check with any bank, securities broker or other intermediary through which they hold Notes when such intermediary would need to receive instructions from a Noteholder in order for that Noteholder to be able to participate in the Tender Offer and/or the Consent Solicitation, or withdraw its instruction to participate in the Consent Solicitation by the deadlines specified in this Tender Offer and Consent Solicitation Memorandum. **The deadlines set by any such intermediary and each Clearing System for the submission of Tender Instructions or the submission and withdrawal of Consents will be earlier than the relevant deadlines specified in this Tender Offer and Consent Solicitation Memorandum.**

## **Tender Instructions**

Tender Instructions must be submitted in respect of a principal amount of Notes of no less than the Minimum Denomination and may be submitted in integral multiples of U.S.\$1 thereafter.

The tendering of Notes in the Tender Offer will be deemed to have occurred upon receipt by the Tender and Tabulation Agent via the relevant Clearing System of a valid Tender Instruction submitted in accordance with the requirements of such Clearing System. The transmission or entry of such Tender Instruction by or through the relevant Clearing System will be acknowledged by, or visible on the internal systems of, such Clearing System in accordance with the standard practices of such Clearing System and will result in the “blocking” (as such term is generally employed in the securities custody industry) of the relevant Notes in the Noteholder’s account with the relevant Clearing System so that no transfers may be effected in relation to such Notes.

Each Noteholder must take the appropriate steps through the relevant Clearing System so that no transfers may be effected in relation to such tendered Notes at any time after the date of submission of such Tender Instruction, in accordance with the requirements of the relevant Clearing System and the deadlines required by such Clearing System. Each Direct Participant will be deemed to consent to have the relevant Clearing System provide details concerning such Direct Participant’s identity to the Tender and Tabulation Agent (and for the Tender and Tabulation Agent to provide such details to the Offeror and the Issuer and their legal advisers).

A separate Tender Instruction must be submitted on behalf of each beneficial owner of the Notes.

A Noteholder may submit, or arrange to have submitted on its behalf, one or more Tender Instructions in respect of the Notes which such Noteholder holds prior to the Expiration Deadline, provided that the aggregate principal amount of Notes tendered does not exceed the aggregate principal amount of Notes which such Noteholder holds.

**By submitting a Tender Instruction, Noteholders will also provide a Consent for the approval of the Proposed Amendments in respect of the aggregate principal amount of the Notes tendered. A Noteholder who submits a Tender Instruction shall not be eligible to submit a Consent Only Instruction.**

## **Consent Only Instructions**

Any Noteholder who does not wish, or who is not able, to tender its Notes for purchase pursuant to the Tender Offer but who wishes to provide Consent to the Proposed Amendments, should deliver, or arrange to have delivered on its behalf, via the relevant Clearing System and in accordance with the requirements of such Clearing System, a valid Consent Only Instruction that is received by the Tender and Tabulation Agent by the Expiration Deadline. A Consent in the Consent Solicitation will be effective upon receipt by the Tender and Tabulation Agent through the relevant Clearing System, by the Expiration Deadline, of a valid Consent Only Instruction delivered in accordance with the requirements of such Clearing System.

The transmission or entry of a Consent Only Instruction by or through the relevant Clearing System will be acknowledged by, or visible on the internal systems of, such Clearing System in accordance with the standard practices of such Clearing System and will result in the “blocking” (as such term is generally employed in the securities custody industry) of the relevant Notes in the Noteholder’s account with the relevant Clearing System so that no transfers may be effected in relation to such Notes.

Each Noteholder must take the appropriate steps through the relevant Clearing System so that no transfers may be effected in relation to such blocked Notes at any time after the date of delivery of such Consent Only Instruction until the occurrence of the Effective Time, valid revocation of such Consent Only Instruction or termination of the Consent Solicitation, in accordance with the requirements of the relevant Clearing System and the deadlines required by such Clearing System. By blocking the Notes in the relevant Clearing System,



each Noteholder and Direct Participant will be deemed to direct the relevant Clearing System to provide details concerning its identity to the Tender and Tabulation Agent (and for the Tender and Tabulation Agent to provide such details to the Issuer and its legal advisers).

A separate Consent Only Instruction must be submitted on behalf of each beneficial owner of the Notes.

Noteholder must not deliver, or arrange to have delivered on its behalf, more than one Consent Only Instruction in respect of the same Notes.

### **Euroclear or Clearstream, Luxembourg Procedures**

To effectively tender the Notes pursuant to the Tender Offer that are held through Euroclear or Clearstream, Luxembourg, participants of Euroclear or Clearstream, Luxembourg, as the case may be, a Noteholder must electronically transmit its Tender Instruction via a message to Euroclear or Clearstream, Luxembourg, as the case may be, containing the following information:

- (a) the event or reference number issued by Euroclear or Clearstream, Luxembourg;
- (b) the name of the Direct Participant and the securities account number in which the Notes the Noteholder wishes to tender are held;
- (c) the ISIN or Common Code of the Notes;
- (d) the principal amount of the Notes tendered (subject to the Minimum Denomination);
- (e) the Submitted Purchase Price, expressed in whole U.S. Dollars per U.S.\$1,000 in the principal amount of the Notes tendered and the Submitted Purchase Amount; and
- (f) any other information as may be required by Euroclear or Clearstream, Luxembourg and duly notified to the Noteholder prior to the submission of the Tender Instruction.

In addition, the Noteholder must, at or prior to the Expiration Deadline, (a) cause Euroclear or Clearstream, Luxembourg, as the case may be, to block the position in the tendered Notes in accordance with the procedures of Euroclear or Clearstream, Luxembourg, as the case may be, and (b) instruct Euroclear or Clearstream, Luxembourg, as the case may be, to send the Tender and Tabulation Agent an electronic message confirming: (i) the Direct Participant's Tender Instruction and (ii) that the position in the Notes being tendered has been blocked from trading pending settlement of the Tender Offer or termination of the Tender Offer. Euroclear and Clearstream, Luxembourg will collect from the Direct Participants: (1) instructions to (a) tender the Notes and deliver the acceptances held by them on behalf of their Direct Participants and (b) credit their accounts on the Settlement Date, in respect to the tendered Notes that are accepted, and (2) irrevocable authorization to disclose the name of the Direct Participants and information about the foregoing instructions to the Tender and Tabulation Agent (and for the Tender and Tabulation Agent to provide such details to the Offeror, the Issuer and their legal advisers).

A Noteholder who does not wish, or who is not able, to tender its Notes for purchase pursuant to the Tender Offer but who wishes to participate in the Consent Solicitation and to provide Consents in respect of the Notes that are held through Euroclear or Clearstream, Luxembourg, participants of Euroclear or Clearstream, Luxembourg, as the case may be, must electronically transmit its Consent Only Instruction via a message to Euroclear or Clearstream, Luxembourg, as the case may be, containing the following information:

- (a) the event or reference number issued by Euroclear or Clearstream, Luxembourg;
- (b) the name of the Direct Participant and the securities account number in respect of which the Noteholder intends to provide Consent;

- (c) the ISIN or Common Code of the Notes;
- (d) the principal amount of the Notes in respect of which Consents are submitted; and
- (e) any other information as may be required by Euroclear or Clearstream, Luxembourg and duly notified to the Noteholder prior to the submission of the Consent Only Instruction.

In addition, the Noteholder must, at or prior to the Expiration Deadline, (a) cause Euroclear or Clearstream, Luxembourg, as the case may be, to block the position in the Notes in respect of which it wishes to deliver its Consent Only Instruction in accordance with the procedures of Euroclear or Clearstream, Luxembourg, as the case may be, and (b) instruct Euroclear or Clearstream, Luxembourg, as the case may be, to send the Tender and Tabulation Agent an electronic message confirming: (i) the Direct Participant's Consent Only Instruction and (ii) that the position in the Notes in respect of which it wishes to deliver its Consent Only Instruction has been blocked from trading pending the occurrence of the Effective Time, valid revocation of such Consent Only Instruction or termination of the Consent Solicitation.

**Only Direct Participants may submit Tender Instructions or Consent Only Instructions. Each Noteholder that is not a Direct Participant must arrange for the Direct Participant through which such Noteholder holds its Notes to submit a valid Tender Instruction or Consent Only Instruction on its behalf to the relevant Clearing System before the deadlines specified by the relevant Clearing System.**

### **Revocation of Tender Instructions or Consents**

A valid Tender Instruction submitted in accordance with the procedures set out in this section may not be revoked, unless the Tender Offer is terminated or as required by applicable law.

Consents delivered (including Consents provided with the Tender Instructions) and not validly revoked prior to the Effective Time may not be withdrawn or revoked at any time thereafter, unless the Consent Solicitation is terminated or as required by applicable law. Holders of Notes should note that the Effective Time may fall before, at or after the Expiration Deadline, and such holders of Notes may not be given prior notice of such Effective Time. Holders of Notes that are held through an intermediary are advised to check with such entity when it needs to receive instructions to revoke a Consent Only Instruction or revoke Consent provided with a Tender Instruction in order to meet the above deadline. For the revocation of Consents to be effective, the Noteholder or the relevant Direct Participant on its behalf, must deliver a withdrawal instruction to the Tender and Tabulation Agent through the facilities of the relevant Clearing System. To be valid, a revocation instruction in relation to a Consent Only Instruction or a Consent provided with a Tender Instruction must reference the original Consent Only Instruction or the original Tender Instruction, the aggregate principal amount of Notes to which the original Consent Only Instruction or the original Tender Instruction is related and any other information required by the Tender and Tabulation Agent or the relevant Clearing System. Noteholders who revoke delivered Consents will have the right to re-deliver their Consents prior to the Expiration Deadline in accordance with the procedures described above for delivering Consents.

### **Agreement, Acknowledgements, Representations, Warranties and Undertakings of the Noteholders**

By submitting a valid Tender Instruction or the Consent Only Instruction to the relevant Clearing System in accordance with the standard procedures of such Clearing System, a Noteholder and any Direct Participant submitting such Tender Instruction or the Consent Only Instruction on such Noteholder's behalf will be deemed to agree, and acknowledge, represent, warrant and undertake, to the Offeror, the Issuer and the Tender and Tabulation Agent the following, as applicable, at the time of submission of the Tender Instruction or the Consent Only Instruction, at the Expiration Deadline and the time of settlement on the Settlement Date (if a Noteholder

or Direct Participant is unable to make any such agreement or acknowledgement or give any such representation, warranty or undertaking, such Noteholder or Direct Participant should contact the Tender and Tabulation Agent immediately):

- (a) it has received this Tender Offer and Consent Solicitation Memorandum, and has reviewed and accepts the offer, solicitation and distribution restrictions, terms, conditions, risk factors and other considerations of the Tender Offer and/or the Consent Solicitation, all as described in this Tender Offer and Consent Solicitation Memorandum, and it is assuming all the risks inherent in participating in the Tender Offer and/or the Consent Solicitation and has undertaken an appropriate analysis (including from a tax and legal perspective) of the implications of the Tender Offer and/or the Consent Solicitation without reliance on the Offeror, the Issuer, the Tender and Tabulation Agent or the Trustee;
- (b) by submitting a Tender Instruction and blocking the relevant Notes in the relevant Clearing System, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf will be deemed to consent, in the case of a Direct Participant, to have such Clearing System provide details concerning its identity to the Tender and Tabulation Agent (and for the Tender and Tabulation Agent to provide such details to the Offeror, the Issuer and their legal advisers);
- (c) by submitting a Tender Instruction, upon the terms and subject to the conditions of the Tender Offer, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf tenders for purchase in the Tender Offer the aggregate principal amount of Notes blocked, or to be blocked, as the case may be, in its account in the relevant Clearing System and, subject to and effective on such purchase by the Offeror, it renounces all right, title and interest in and to all such Notes purchased by or at the direction of the Offeror or the Issuer, and waives and releases any rights or claims it may have against the Offeror or the Issuer with respect to any such Notes and the Tender Offer;
- (d) by submitting a Tender Instruction, if the Notes tendered for purchase are accepted by the Offeror, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf acknowledges that (i) the relevant Purchase Price Payment and the Accrued Interest Payment will be paid in U.S. Dollars, (ii) such cash amounts will be deposited by or on behalf of the Offeror with the Clearing Systems on the Settlement Date, (iii) on receipt of such cash amounts, the Clearing Systems will make payments promptly to the accounts in the Clearing Systems of the relevant Direct Participants and (iv) payment of such cash amounts to or to the order of the Clearing Systems will discharge the obligation of the Offeror and the Issuer to such Noteholder in respect of the payment of the cash amounts, and no additional amounts shall be payable to the Noteholder in the event of a delay in the payment of such cash amounts by the relevant Clearing System or an intermediary to the Noteholder;
- (e) by submitting a Consent Only Instruction, a Noteholder or any Direct Participant submitting such Consent Only Instruction on its behalf acknowledges that (i) the relevant Consent Consideration will be paid in U.S. Dollars, (ii) such cash amounts will be deposited by or on behalf of the Issuer with the Clearing Systems on the Settlement Date, (iii) on receipt of such cash amounts, the Clearing Systems will make payments promptly to the accounts in the Clearing Systems of the relevant Direct Participants and (iv) payment of such cash amounts to or to the order of the Clearing Systems will discharge the obligation of the Issuer to such Noteholder in respect of the payment of the cash amounts, and no additional amounts shall be payable to the Noteholder in the event of a delay in the payment of such cash amounts by the relevant Clearing System or an intermediary to the Noteholder;
- (f) it agrees to ratify and confirm each and every act or thing that may be done or effected by the Offeror or the Issuer, any of their directors or any person nominated by the Offeror or the Issuer in the proper exercise of his or her powers and/or authority hereunder;

- (g) by submitting a Tender Instruction, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf agrees to do all such acts and things as will be necessary and execute any additional documents deemed by the Offeror to be desirable, in each case to complete the transfer of the relevant Notes to the Offeror or its nominee against payment to it of the relevant Purchase Price Payment and the Accrued Interest Payment for such Notes and/or to perfect any of the authorities expressed to be given hereunder;
- (h) it has observed the laws of all relevant jurisdictions; obtained all requisite governmental, exchange control or other required consents; complied with all requisite formalities and procurement rules; and paid, or will pay, any issue, transfer or other taxes or requisite payments due from it in each respect in connection with any offer or acceptance in any jurisdiction and that it has not taken or omitted to take any action in breach of the terms of the Tender Offer or the Consent Solicitation or which will or may result in the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any other person acting in breach of the legal or regulatory requirements of any such jurisdiction in connection with the Tender Offer and/or the Consent Solicitation;
- (i) all authority conferred or agreed to be conferred pursuant to its acknowledgements, agreements, representations, warranties and undertakings, and all of its obligations will be binding upon its successors, assigns, heirs, executors, trustees in bankruptcy and legal representatives, and will not be affected by, and will survive, its death or incapacity;
- (j) no information has been provided to it by the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any of their respective directors, officers or employees, with regard to the tax consequences for Noteholders arising from the purchase of Notes by the Offeror pursuant to the Tender Offer, the receipt by the Noteholder of the relevant Purchase Price Payment and the Accrued Interest Payment, the acceptance of Consents by the Issuer pursuant to the Consent Solicitation and the receipt by the Noteholder of the Consent Consideration, and it acknowledges that it is solely liable for any taxes and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its participation in the Tender Offer and/or the Consent Solicitation and agrees that it will not and does not have any right of recourse (whether by way of reimbursement, indemnity or otherwise) against the Offeror, the Issuer, the Tender and Tabulation Agent, the Trustee or any of their respective directors, officers or employees, or any other person in respect of such taxes and payments;
- (k) it has had access to such financial and other information concerning the Notes, and has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers, as it deems necessary or appropriate in order to make an informed decision with respect to its tendering of Notes for purchase in the Tender Offer or otherwise participating in the Consent Solicitation; it is not relying on any communication (written or oral) made by any party involved in the Tender Offer and/or the Consent Solicitation or any such party's affiliates as constituting a recommendation to tender Notes in the Tender Offer or to otherwise participate in the Consent Solicitation; and it is able to bear the economic risks of participating in the Tender Offer and/or the Consent Solicitation;
- (l) it is not a person to whom it is unlawful to make an invitation pursuant to the Tender Offer or solicitation pursuant to the Consent Solicitation under applicable securities laws and it has (before submitting, or arranging for the submission on its behalf, as the case may be, of the Tender Instruction or the Consent Only Instruction) complied with all laws and regulations applicable to it for the purposes of its participation in the Tender Offer and/or the Consent Solicitation;
- (m) it is not located in Italy or, if it is located in Italy, the relevant Tender Instruction or the Consent Only Instruction is being submitted by or on behalf of the beneficial owners of the Notes through an authorised person (such as an investment firm, bank or financial intermediary permitted to conduct such activities

in the Republic of Italy in accordance with the Financial Services Act, CONSOB Regulation No. 16190 of 29 October 2007, as amended from time to time, and Legislative Decree No. 385 of 1 September 1993, as amended) and in compliance with applicable laws and regulations or with requirements imposed by CONSOB or any other Italian authority;

- (n) it is not located or resident in the United Kingdom or, if it is located or resident in the United Kingdom, it is a person falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Promotion Order) or within Article 43(2) of the Financial Promotion Order, or to whom this Tender Offer and Consent Solicitation Memorandum and any other documents or materials relating to the Tender Offer and the Consent Solicitation may otherwise lawfully be communicated in accordance with the Financial Promotion Order;
- (o) it is not located or resident in the Russian Federation;
- (p) it is not a Sanctions Restricted Person;
- (q) it has full power and authority to tender the Notes it has tendered in the Tender Offer or to provide the Consent pursuant to the Consent Solicitation, and it will, upon request, execute and deliver any additional documents and/or do such other things deemed by the Offeror or the Issuer to be necessary or desirable to evidence such power and authority;
- (r) by submitting a Tender Instruction, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf will not transfer any beneficial interest in any such Notes to any other person (other than pursuant to the Tender Offer) from the date of submission of the relevant Tender Instruction until the time of settlement of the Tender Offer on the Settlement Date or until the date of any termination of the Tender Offer, and, if the Notes subject of the Tender Instruction are accepted for purchase by the Offeror, such Notes will be transferred to, or to the order of, the Offeror with full title free from all liens, charges and encumbrances, not subject to any adverse claim and together with all rights attached to such Notes, and it will, upon request, execute and deliver any additional documents and/or do such other things deemed by the Offeror to be necessary or desirable to complete the transfer of such Notes;
- (s) by submitting a Tender Instruction, a Noteholder or any Direct Participant submitting such Tender Instruction on its behalf holds and will hold, until the time of settlement on the Settlement Date, the Notes blocked in the relevant Clearing System and, in accordance with the requirements of, and by the deadline required by, such Clearing System, it has submitted, or has caused to be submitted, a Tender Instruction to such Clearing System and, in the case of Euroclear or Clearstream, Luxembourg, it has authorised the blocking of the tendered Notes with effect on and from the date of such submission so that, at any time pending the transfer of such Notes on the Settlement Date to the Offeror or to its agent on its behalf or until the date of any termination of the Tender Offer, no transfers of such Notes may be effected;
- (t) the terms and conditions of the Tender Offer and the Consent Solicitation will be deemed to be incorporated in, and form a part of, the relevant Tender Instruction and the Consent Only Instruction which must be read and construed accordingly, and that the information given by or on behalf of such Noteholder in the relevant Tender Instruction or the Consent Only Instruction is true and will be true in all respects at the time of submission of such Tender Instruction or the Consent Only Instruction, at the Expiration Deadline or at the time of settlement on the Settlement Date, as the case may be; and
- (u) it acknowledges that the Offeror, the Issuer, the Tender and Tabulation Agent and the Trustee will rely upon the truth and accuracy of the foregoing acknowledgements, agreements, representations, warranties, undertakings and directions and it shall indemnify the Offeror, the Issuer, the Tender and Tabulation Agent and the Trustee against all and any losses, costs, claims, liabilities, expenses, charges,

actions or demands which any of them may incur or which may be made against any of them as a result of any breach of any of the terms of, or any of the agreements, representations, warranties and/or undertakings given in connection with the Tender Offer and/or the Consent Solicitation.

The receipt of a Tender Instruction by the relevant Clearing System will constitute instructions to debit the securities account of the relevant Direct Participant on the Settlement Date, in respect of all of the Notes that the relevant Noteholder has validly tendered in the Tender Offer, upon receipt by such Clearing System of an instruction from the Tender and Tabulation Agent for such Notes to be transferred to the specified account of the Offeror or its agent on its behalf and against payment by the Offeror of the relevant Purchase Price Payment and the Accrued Interest Payment for such Notes, subject to the automatic revocation of those instructions on the date of any termination of the Tender Offer (including where such Notes are not accepted for purchase by the Offeror), and subject to acceptance of the Tender Offer by the Offeror and all other conditions of the Tender Offer.

### **Irregularities**

All questions as to the validity, form and eligibility (including times of receipt) of any Tender Instruction or the Consent Only Instruction will be determined by the Offeror and the Issuer, respectively, in their sole discretion, which determination will be final and binding.

The Offeror and the Issuer reserve the absolute right to reject any and all Tender Instructions and Consent Only Instructions, respectively, not in proper form or for which any corresponding agreement by the Offeror or the Issuer to accept would, in the opinion of the Offeror or the Issuer and their respective legal advisers, be unlawful. The Offeror and the Issuer also reserve the absolute right to waive any defects, irregularities or delay in the submission of any and all Tender Instructions and Consent Only Instructions, respectively. The Offeror and the Issuer also reserve the absolute right to waive any such defect, irregularity or delay in respect of a particular tender of Notes or a Consent Only Instruction, respectively, whether or not the Offeror or the Issuer elects to waive similar defects, irregularities or any delay in respect of any other Notes or Consent Only Instructions.

Any defect, irregularity or delay must be cured within such time as the Offeror or the Issuer determines, unless waived by it. Tender Instructions or Consent Only Instructions will be deemed not to have been made until such defects, irregularities or delays have been cured or waived. None of the Offeror, the Issuer or any of their affiliates or assigns, the Tender and Tabulation Agent or any other person will be under any duty to give notice to a Noteholder of any defects, irregularities or delays in any Tender Instruction, Consent Only Instruction or revocation of Consent Only Instruction nor will any of them incur any liability for failure to give such notice.

None of the Offeror, the Issuer, the Tender and Tabulation Agent, or any of their respective directors, officers, employees, affiliates, advisers or agents accepts any responsibility for the failure of delivery of any Tender Instructions, Consent Only Instructions or other notice or communication.

## AMENDMENT AND TERMINATION

Notwithstanding any other provision herein, the Offeror may, subject to applicable laws, at its option and in its sole and absolute discretion, at any time before any acceptance by the Offeror of the Notes tendered for purchase in the Tender Offer and the Issuer may, subject to applicable laws, at its option and in its sole and absolute discretion, at any time before the Effective Time:

- (a) extend the Expiration Deadline for the Tender Offer and/or the Consent Solicitation (in which case all references in this Tender Offer and Consent Solicitation Memorandum to “Expiration Deadline” shall, unless the context otherwise requires, be to the latest time and date to which the Expiration Deadline has been so extended);
- (b) otherwise extend or amend the Tender Offer and/or the Consent Solicitation in any respect (including, but not limited to, any increase, decrease, extension or amendment, as applicable, in relation to the Expiration Deadline, the Settlement Date, the Minimum Purchase Price, the Maximum Acceptance Amount and/or the Consent Consideration);
- (c) delay the acceptance of Tender Instructions or Consent Only Instructions or, subject to applicable law, the purchase of Notes validly tendered in the Tender Offer, payment of the Consent Consideration or the implementation of the Proposed Amendments until satisfaction or waiver of the conditions to the Tender Offer and the Consent Solicitation, even after the Expiration Deadline; or
- (d) terminate the Tender Offer and/or the Consent Solicitation, including with respect to Tender Instructions and/or the Consent Only Instructions submitted before the time of such termination.

In the event of a termination of the Tender Offer without a termination of the Consent Solicitation, Consents provided by the holders of the Notes that have submitted a Tender Instruction will continue to be valid for purposes of the Consent Solicitation unless validly revoked by such Noteholders prior to the Effective Time.

In the event of an amendment to the terms of the Tender Offer that are not materially prejudicial to the interests of Noteholders that have already submitted Tender Instructions in the Tender Offer before the announcement of such amendment, then such Tender Instructions shall continue to be irrevocable.

For the avoidance of doubt, (a) a decision by the Offeror on any change in the Maximum Acceptance Amount or (b) any extension of the Tender Offer (including any amendment in relation to the Expiration Deadline and/or the Settlement Date) in accordance with the terms of the Tender Offer as described in this section “*Amendment and Termination*” shall not be considered materially prejudicial to the interests of Noteholders that have already submitted Tender Instructions before the announcement of such amendment.

Any waiver, amendment or modification of the Consent Solicitation will apply to all Consents delivered pursuant to the Consent Solicitation.

If the Consent Solicitation is amended prior to the Effective Time in a manner determined by the Issuer, in its sole discretion, to constitute a material adverse change to the interests of Noteholders that have already provided Consents with their Tender Instructions or submitted Consent Only Instructions in the Consent Solicitation before the announcement of such amendment, the Issuer will notify the Noteholders of the proposed amendments to the Consent Solicitation and extend the Expiration Deadline as the Issuer deems necessary.

Notwithstanding any other provision of the Consent Solicitation, the Issuer may, subject to applicable law, terminate or withdraw, at its sole discretion, the Consent Solicitation if any condition of the Consent Solicitation is not satisfied at or prior to the Expiration Deadline. See “*Terms and Conditions of the Tender Offer and Consent Solicitation – Conditions of the Tender Offer and the Consent Solicitation*”.

In the event that the Consent Solicitation is terminated or otherwise not completed, the Consent Consideration will not be paid or become payable to Noteholders who have validly delivered their Consents in connection with the Consent Solicitation. In any such event, the Proposed Amendments contained in the Supplemental Indenture will not become effective.

The Offeror and the Issuer will ensure Noteholders are notified of any such extension, amendment, delay or termination as soon as is reasonably practicable after the relevant decision is made.

The Offeror and the Issuer also reserve the right at any time to waive any or all of the conditions of the Tender Offer and the Consent Solicitation, respectively, as set out in this Tender Offer and Consent Solicitation Memorandum.



## **TENDER AND TABULATION AGENT**

The Offeror and the Issuer have retained GLAS Specialist Services Limited to act as Tender and Tabulation Agent.

Neither the Tender and Tabulation Agent nor any of its directors, officers, employees or affiliates is acting for any Noteholder, or will be responsible to any Noteholder for providing the protections afforded to its clients or for providing advice in relation to the Tender Offer or the Consent Solicitation and, accordingly, neither the Tender and Tabulation Agent nor any of its directors, officers, employees, agents or affiliates assumes any liability or responsibility for the accuracy or completeness of the information concerning the Tender Offer, the Consent Solicitation, the Offeror, the Issuer, any of their affiliates or the Notes contained in this Tender Offer and Consent Solicitation Memorandum or for any failure by the Offeror or the Issuer to disclose events that may have occurred and may affect the significance or accuracy of such information.

Neither the Tender and Tabulation Agent nor any of its directors, officers, employees or affiliates makes any representation or recommendation whatsoever regarding the Tender Offer or the Consent Solicitation or any recommendation as to whether or not Noteholders should tender Notes in the Tender Offer or otherwise participate in the Consent Solicitation.

The Tender and Tabulation Agent is the agent of the Offeror and the Issuer and owes no duty to any Noteholder.

**ANNEX A**  
**FORM OF SUPPLEMENTAL INDENTURE**

This Supplemental Indenture (the “Supplemental Indenture”), dated as of [●], 2023, among DTEK Energy B.V., a company organized under the laws of the Netherlands, having its official seat (*statutaire zetel*) in Amsterdam, the Netherlands and its office at Strawinskylaan 1531, Tower B, Level 15 grid TB-15-046/089, 1077XX Amsterdam, the Netherlands and registered with the Dutch Trade Register (*Handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 34334895, as successor issuer to DTEK Finance plc, a company organized under the laws of England and Wales, having its registered office at Leadenhall Building, 122 Leadenhall Street, Floor 45, London, England, EC3V 4AB, and registered under number 08422508 (in such capacity, the “**Issuer**”), DTEK Energy B.V., as Parent Guarantor (in such capacity, the “**Parent Guarantor**”) and GLAS Trust Company LLC, as trustee (the “**Trustee**”).

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an indenture, dated as of May 17, 2021, (the “**Indenture**”), among DTEK Finance plc, as original issuer, the Guarantors party thereto, the Trustee, GLAS Trust Company LLC, as Paying Agent, GLAS Trust Corporation Limited, as the Security Agent and GLAS USA LLC, as Transfer Agent and Registrar, as amended by the supplemental indenture dated as of November 25, 2022, among DTEK Finance plc, as original issuer, the Issuer, as successor issuer, the Guarantors party thereto and the Trustee, as amended by the supplemental indenture dated as of December 13, 2022, among the Issuer, the Parent Guarantor and the Trustee and as further amended by the supplemental indenture dated as of July 21, 2023, among DTEK Finance plc, as subsidiary guarantor, the Issuer, and the Trustee (as amended, supplemented or otherwise modified from time to time, the “**Indenture**”) relating to the 7.0/7.5% Senior Secured PIK Toggle Notes due 2027 (the “**Notes**”);

WHEREAS, Section 9.02 of the Indenture provides that the Issuer and the Trustee may, with the consent of the holders of at least a majority in aggregate principal amount of the Notes then outstanding (the “**Requisite Consents**”), modify, amend or supplement the Indenture, subject to certain limitations set forth in the Indenture;

WHEREAS, the Issuer has solicited consents to amend the Indenture (the “**Proposed Amendments**”), upon the terms and subject to the conditions set forth in the tender offer and consent solicitation memorandum dated September 12, 2023, as amended, supplemented or modified;

WHEREAS, the Issuer has notified the Trustee in writing that it has obtained the Requisite Consents to effect the Proposed Amendments under the Indenture; and

WHEREAS, the Issuer desires to amend the Indenture, as set forth in Article 1 of this Supplemental Indenture, to reflect the Proposed Amendments; and

WHEREAS, the Issuer hereby requests the Trustee to join with the Issuer and the Parent Guarantor in the execution and delivery of this Supplemental Indenture in accordance with Sections 9.02, 9.05, 13.02, and 13.03 of the Indenture, and the Issuer has furnished to the Trustee, and the Trustee has received, an Officers’ Certificate and Opinion of Counsel stating, among other things, that this Supplemental Indenture is permitted by the Indenture and that this Supplemental Indenture is the legal, valid and binding obligation of the Issuer (and the Parent Guarantor) enforceable against them in accordance with its terms and complies with the provisions of the Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer, the Parent Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of Notes as follows:

**ARTICLE 1**  
**AMENDMENTS TO THE INDENTURE**

SECTION 1.01 Amendments to the Indenture. The following amendments shall be made to the Indenture:

(a) The definition of “Asset Sale” in Section 1.01 of the Indenture is hereby amended by

a. replacing clause (2) with the following:

“(2) the sale or disposition of assets or cash with an aggregate Fair Market Value not exceeding \$50 million per annum (when taken together with any utilizations under clause (13) of the definition of “Permitted Investments”) consummated in each case for the purpose of allowing the Issuer or any Restricted Subsidiary to engage in charitable or other social initiatives, provided that, in no event shall dispositions of assets (other than non-core or obsolete assets pursuant to the foregoing) exceed an aggregate Fair Market Value of \$5 million per annum, and, provided further that, no sale or disposition of assets permitted by this clause (2) (or for the avoidance of doubt, any payments of cash or Cash Equivalents) shall be made with or to any Affiliate of the Parent Guarantor, Issuer or any Restricted Subsidiary.”

b. replacing “.” at the end of clause (11) thereof with “; and” and adding a new subparagraph thereafter as follows:

“(12) any Restricted Payment that does not violate Section 4.06 (Limitation on Restricted Payments) or a Permitted Investment.”

(b) The definition of “Consolidated Net Income” in Section 1.01 of the Indenture is hereby amended by deleting “and” at the end of clause (8) thereof, replacing “.” at the end of clause (9) thereof with “;” and adding new subparagraphs thereafter as follows:

“(10) non-cash foreign exchange gains or losses;

(11) any property, plant and equipment impairment charge;

(12) any income or charge attributable to a post-employment benefit scheme other than the current service costs attributable to the scheme;

(13) the cumulative effect of a change in non-cash provision of expected credit losses required by applicable accounting policy, in each case, without duplication and solely to the extent increasing or decreasing Consolidated Net Income for such period and determined on a consolidated basis in accordance with IFRS for such period; and

(14) the cumulative effect of depreciation, amortisation and depletion during such period, without duplication and solely to the extent decreasing Consolidated Net Income for such period and determined on a consolidated basis in accordance with IFRS.”

(c) The definition of “Consolidated Non-Cash Charges” in Section 1.01 of the Indenture is hereby amended and replaced with the following:

**“Consolidated Non-Cash Charges”** means, with respect to the Parent Guarantor for any period, the aggregate depreciation, amortization (including amortization of intangibles) and any other non-cash charges and expenses of the Parent Guarantor and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with IFRS.

- (d) The definition of “Permitted Business” in Section 1.01 of the Indenture is hereby amended and replaced with the following:

**“Permitted Business”** means the Future Business Lines and any business which is the same as any of the following businesses of the Parent Guarantor and Restricted Subsidiaries: (1) coal mining and related coal exploration and development, (2) heat and power generation, (3) machine building activities and mine construction services, (4) sales and purchases of mine construction and other underground services, in each case, directly relating to coal mining and (5) any business directly related to the business described in clauses (1), (2), (3) and (4) above.

- (e) The definition of “Permitted Investment” in Section 1.01 of the Indenture is hereby amended by replacing clause (13) with the following:

“(13) Investments or cash payments in an aggregate amount not to exceed \$50 million per annum (when taken together with any utilizations of clause (2) under the definition of “Asset Sale”) made for the purpose of engaging in charitable or other social initiatives;”

- (f) The definition of “Permitted Lien” in Section 1.01 of the Indenture is hereby amended by replacing clause (18) with the following:

“(18) any Lien securing Indebtedness under the first paragraph of Section 4.05, clauses (j), (k), (l) or (m) of the second paragraph of Section 4.05 or Permitted Excluded Facility Roll-over Indebtedness (as defined in Section 4.05(d)); provided that, the aggregate book value of the assets (as reflected in the audited consolidated balance sheet for the Parent Guarantor as of the end of the most recent fiscal year or, if any such assets have been acquired since the date of such balance sheet, the cost of such acquired assets) subject to Liens incurred or existing pursuant to this clause (18) does not in the aggregate exceed 200.0% of the aggregate principal amount of Indebtedness secured by such Liens;”

- (g) Section 1.01 of the Indenture is hereby amended by adding the definitions of “Permitted Transactions” and “Relevant Period” as follows:

**“Permitted Transactions”** means any business activities of a Subsidiary or an Affiliate of DTEK Group B.V. (formerly DTEK B.V.) that utilize the assets of the Group, including, but not limited to, leasing land plots and/or points of interconnections, providing access to powerplant dispatch and control systems, or undertaking maintenance and operation services, in each case, on arm’s length terms and in relation to battery energy storage systems.

**“Relevant Period”** means the most recently ended two semi-annual periods for which financial statements have been provided to the Trustee pursuant to Section 4.16 (Reports to Holders).

- (h) Section 4.05 of the Indenture (Limitation on Indebtedness) is hereby amended by

a. replacing the first paragraph thereof in its entirety with the following:

“The Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (individually and collectively, to **“Incur”**) any Indebtedness (including Acquired Debt), provided that the Parent Guarantor or any other Guarantor may incur Indebtedness if on the date of such Incurrence and after giving effect thereto on a pro forma basis

(including a pro forma application of the net proceeds therefrom), the Consolidated Leverage Ratio does not exceed 2.5 to 1.0.”

b. deleting “and” at the end of clause (k) thereof, replacing “.” at the end of clause (l) thereof with “; and” and adding a new subparagraph thereafter as follows:

“(m) the loan(s) in the aggregate amount of UAH 5.2 billion for the purposes of repairing and replacing damaged or outdated equipment, as well as supporting repair work of the Group’s assets that were damaged by shelling.”

- (i) Section 4.06 of the Indenture (Limitation on Restricted Payments) is hereby amended by replacing the first paragraph thereof in its entirety with the following:

“The Parent Guarantor will not, and will not permit any Restricted Subsidiary, directly or indirectly, to:

(a) declare or pay any dividend or make any other payment or distribution on account of the Parent Guarantor’s or any Restricted Subsidiaries’ Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Parent Guarantor or any Restricted Subsidiary) or to the direct or indirect holders of Equity Interests of the Parent Guarantor or any Restricted Subsidiary in their capacity as such, in each case, other than dividends, payments or distributions payable to the Issuer, Parent Guarantor or any Subsidiary Guarantor;

(b) purchase, redeem, defease or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Parent Guarantor or any Restricted Subsidiary) any Equity Interests of the Parent Guarantor or any Restricted Subsidiary (other than, in each case, any such Equity Interests owned by the Issuer, Parent Guarantor or any Subsidiary Guarantor);

(c) purchase, repurchase, redeem, defease, set-off or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Indebtedness (other than (A) any intercompany Indebtedness between or among Parent Guarantor, the Issuer and any Subsidiary Guarantor or (B) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(d) make any Restricted Investment;

(all such payments and other actions set forth in clauses (a) through (d) of this paragraph being collectively referred to as “**Restricted Payments**”), so long as there remains any principal amount outstanding under any of the Notes or any other obligation or amount outstanding hereunder or thereunder, unless, at the time and after giving effect to such Restricted Payment,

(4) no Default or an Event of Default shall have occurred and be continuing (or would result therefrom);

(5) the Parent Guarantor would, at the time of such Restricted Payment and after giving *pro forma* effect thereto as if such Restricted Payment had been made at the beginning of the Relevant Period, have been permitted to Incur an additional \$1.00 of Indebtedness pursuant to the first paragraph of Section 4.05 (Limitation on Indebtedness); and

(6) (a) on a pro forma basis, the Consolidated Leverage Ratio would be 1.0 to 1.0 or lower or (b) such Restricted Payment, together with the aggregate amount of all other Restricted Payments

made by the Parent Guarantor and its Restricted Subsidiaries since the Issue Date (excluding Restricted Payments permitted by the second paragraph of this Section 4.06), would not exceed the sum of (without duplication):

- (A) (i) 50% of the Consolidated Net Income; or (ii) if the Consolidated Leverage Ratio for the Relevant Period prior to such Restricted Payment does not exceed 2.0 to 1.0 on a pro forma basis after giving effect to any such Restricted Payment and any related transaction, 75% of the Consolidated Net Income; or (iii) if the Consolidated Leverage Ratio for the Relevant Period prior to such Restricted Payment does not exceed 1.5 to 1.0 on a pro forma basis after giving effect to any such Restricted Payment and any related transaction, 100% of the Consolidated Net Income, in each case, accrued during the period (treated as one accounting period) beginning on January 1, 2022 and ending at the end of the most recent six-month period for which financial statements have been provided under Section 4.16 (Reports to Holders) prior to the date of such Restricted Payment (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit);
  - (B) 100% of the aggregate net cash proceeds received by the Parent Guarantor since January 1, 2022 from the issuance or sale of its Capital Stock (other than Disqualified Stock) (other than an issuance or sale to a Subsidiary of the Parent Guarantor and other than an issuance or sale to an employee stock ownership plan or to a trust established by the Parent Guarantor or any of its Subsidiaries for the benefit of their employees) or capital contribution received by the Parent Guarantor;
  - (C) 100% of the aggregate net cash proceeds and the Fair Market Value of property or assets or marketable securities received by the Parent Guarantor since January 1, 2022 from the issue or sale by the Parent Guarantor or any Restricted Subsidiary subsequent to January 1, 2022 of any Indebtedness that has been converted into or exchanged for Capital Stock of the Parent Guarantor (other than Capital Stock and convertible or exchangeable Disqualified Stock or debt securities sold to a Subsidiary of the Parent Guarantor);
  - (D) to the extent that any Restricted Investment that was made after January 1, 2022 is (a) sold, disposed of or otherwise cancelled, liquidated or repaid, 100% of the aggregate amount received in cash and the Fair Market Value of the property or assets or marketable securities received by the Parent Guarantor or any Restricted Subsidiary (other than from a Person that is the Parent Guarantor or a Restricted Subsidiary), or (b) made in an entity that subsequently becomes a Restricted Subsidiary, 100% of the Fair Market Value of the Restricted Investment of the Parent Guarantor and its Restricted Subsidiaries as of the date such entity becomes a Restricted Subsidiary; and
  - (E) to the extent that any Unrestricted Subsidiary of the Parent Guarantor designated as such after the Issue Date is redesignated as a Restricted Subsidiary or is merged or consolidated into the Parent Guarantor or a Restricted Subsidiary, or all of the assets of such Unrestricted Subsidiary are transferred to the Parent Guarantor or a Restricted Subsidiary, the Fair Market Value of the property received by the Parent Guarantor or the Restricted Subsidiary or the Parent Guarantor's Restricted Investment in such Subsidiary as of the date of such redesignation, merger, consolidation or transfer of assets, to the extent such Investments reduced the Restricted Payments capacity under this clause (E) and were not previously repaid or otherwise reduced.”
- (j) The first paragraph of Section 4.09 of the Indenture (Limitation on Affiliate Transaction) is hereby amended by replacing clauses (b) and (c) with the following:

“(b) with respect to any Affiliate Transaction or series of related or similar Affiliate Transactions by the Parent Guarantor or any Restricted Subsidiary involving aggregate consideration equal to or in excess of \$2 million but less than \$10 million, the Parent Guarantor delivers to the Trustee:

- (i) a Director’s Certificate certifying that such transaction or transactions comply with clause (a) above; and
- (ii) a copy of the Qualified Resolution approving such transaction or transactions; and

(c) with respect to any Affiliate Transaction or series of related or similar Affiliate Transactions by the Parent Guarantor or any Restricted Subsidiary involving aggregate consideration equal to or in excess of \$10 million but less than \$25 million, the Parent Guarantor delivers to the Trustee:

- (i) a Director’s Certificate certifying that such transaction or transactions comply with clause (a) above;
- (ii) a copy of the Qualified Resolution approving such transaction or transactions; and
- (iii) a written opinion issued by an Independent Appraiser that such Affiliate Transaction is fair to the Parent Guarantor or the relevant Restricted Subsidiary from a financial point of view.”

- (k) The second paragraph of Section 4.09 of the Indenture (Limitation on Affiliate Transaction) is hereby amended by replacing the “.” at the end of clause (f) thereof with “; and” and adding a new subparagraph thereafter as follows:

“(g) any Restricted Payment that does not violate Section 4.06 (Limitation on Restricted Payments) or a Permitted Investment.”

- (l) Section 4.10 of the Indenture (Limitations on Activities of the Issuer) is hereby deleted, and the section heading is replaced with the following:

“Section 4.10 [Intentionally Left Blank]”

- (m) Section 4.24 of the Indenture (Business Activities) is hereby amended by adding a new paragraph at the end of the section, as follows:

“Notwithstanding any other provision of this Section 4.24, the first paragraph of this Section 4.24 will not prohibit any Permitted Transaction.”

- (n) Section 6.01 of the Indenture (Events of Default) is hereby amended by

- a. replacing clause (c) thereof with the following:

“(c) (i) failure to comply with Section 5.01 or (ii) failure to comply with any section or covenant under Article 4, in each case, for 45 days after the earlier of (i) the date upon which written notice thereof is given to the Issuer by the Trustee or (ii) the date on which any Officer of the Issuer, Holdco Guarantor, Parent Guarantor or any Restricted Subsidiary acquires actual knowledge of such default;”

- b. amending clause (d) thereof by replacing “30 days” with “45 days”.

(o) Exhibit O of the Indenture is hereby amended by adding the following:

“8. Sales and purchases of mine construction and other underground services.”

## ARTICLE 2

### MISCELLANEOUS

SECTION 2.01 Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

SECTION 2.02 Effectiveness. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes shall be bound hereby and thereby.

SECTION 2.03 Confirmation. The Indenture as amended and supplemented by this Supplemental Indenture is in all respects confirmed and preserved.

SECTION 2.04 Incorporation by Reference. Section 13.05 of the Indenture is incorporated by reference into this Supplemental Indenture as if more fully set out herein.

SECTION 2.05 GOVERNING LAW. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 2.06 Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by electronic/digital transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto. Signatures of the parties hereto transmitted by electronic/digital means shall be deemed to be their original signatures for all purposes.

SECTION 2.07 Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 2.08 Trustee not Responsible. The Trustee shall not be responsible in any manner for the validity or sufficiency of this Supplemental Indenture or for the recitals contained herein, all of which are made solely by the Issuer and the Parent Guarantor.



**IN WITNESS WHEREOF**, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

**DTEK ENERGY B.V., as Issuer**

By: \_\_\_\_\_  
Name  
Title:

**DTEK ENERGY B.V., as Parent Guarantor**

By: \_\_\_\_\_  
Name  
Title:

**GLAS TRUST COMPANY LLC, as Trustee**

By: \_\_\_\_\_  
Name  
Title:

**THE OFFEROR**

**DTEK Holdings Limited**  
Themistokli Dervi, 3, Julia House  
1066 Nicosia, Cyprus

**THE ISSUER**

**DTEK Energy B.V.**  
Strawinskylaan 1531, Tower B, Level 15, grid TB-15-046/089  
1077XX, Amsterdam, the Netherlands

**THE TENDER AND TABULATION AGENT**

**GLAS Specialist Services Limited**  
Telephone: +44 (0) 20 3597 2940  
Attention: DCM Liability Management – DTEK Tender and Consent  
Email: [lm@glas.agency](mailto:lm@glas.agency)