



**Registration of a Charge**

Company name: **DTEK INVESTMENTS LIMITED**

Company number: **08422516**



X63VAOAR

Received for Electronic Filing: **07/04/2017**

---

**Details of Charge**

Date of creation: **29/03/2017**

Charge code: **0842 2516 0001**

Persons entitled: **GLAS TRUST CORPORATION LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

---

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

---

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **TOM HUGHES - CMS CAMERON MCKENNA LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 8422516

Charge code: 0842 2516 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th March 2017 and created by DTEK INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th April 2017 .

Given at Companies House, Cardiff on 10th April 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED: 29 MARCH 2017

---

PLEDGE OF CASH SWEEP ACCOUNT RECEIVABLES

---

between

**DTEK HOLDINGS LIMITED**

and

**DTEK INVESTMENTS LIMITED**

as Pledgors

and

**GLAS TRUST CORPORATION LIMITED**

as Pledgee

**DEUTSCHE BANK AG, AMSTERDAM BRANCH**

as Cash Sweep Account Bank

## EXECUTION COPY

CLAUSE	CONTENTS	PAGE
1.	Definitions and interpretation .....	3
2.	Undertaking to pledge .....	5
3.	Creation of the Pledge .....	5
4.	Representations and warranties .....	7
5.	General undertakings .....	7
6.	Information undertakings .....	8
7.	General provisions .....	9
8.	Enforcement and application of proceeds .....	9
9.	Power of attorney .....	9
10.	Release and termination of the Pledge .....	10
11.	Exclusion of liability and indemnification .....	10
12.	Continuation of rights .....	11
13.	Replacement of the Pledgee .....	11
14.	Recourse and subrogations (non-petition) .....	11
15.	Evidence of Secured Obligations .....	12
16.	Waiver .....	12
17.	Costs and expenses .....	12
18.	Notices .....	12
19.	Partial Invalidity .....	13
20.	Remedies and waivers .....	13
21.	Amendments .....	13
22.	Counterparts .....	14
23.	Governing law .....	14
24.	Jurisdiction .....	14

## EXECUTION COPY

THIS AGREEMENT has been entered into on the date first written above and made between:

- (1) **DTEK HOLDINGS LIMITED**, a company incorporated under the law of Cyprus, having its offices at 3, Themistokli Dervi, Julia Court, 1066 Nicosia, Cyprus and registered under number HE174860;
- (2) **DTEK INVESTMENTS LIMITED**, a company incorporated under the law of England and Wales, having its offices in at 3rd Floor 11-12 St. James's Square, London, SW1Y 4LB, United Kingdom, and registered under number 08422516;
- (3) **GLAS TRUST CORPORATION LIMITED**, acting in its capacity as Restructuring Agent under the Override Agreement (the "Pledgee"); and
- (4) **DEUTSCHE BANK AG, AMSTERDAM BRANCH**, a corporation domiciled in Frankfurt am Main, Germany, acting through its Amsterdam Branch located at De Entrée 99-197, 1101 HE Amsterdam, the Netherlands, registered with the trade register of the Chamber of Commerce under number 33304583, acting in its capacity as Cash Sweep Account Bank under the Override Agreement (the "Cash Sweep Account Bank").

The parties mentioned above under (1) and (2) shall hereinafter each be referred to as a "Pledgor" and together as the "Pledgors". The Pledgors, the Pledgee and the Cash Sweep Account Bank are each referred to as a "Party" and together as the "Parties".

### BACKGROUND:

- (A) On or about the date hereof the Parties shall enter into the Override Agreement in order to govern the repayment and satisfaction of the Existing Bank Facilities.
- (B) In order to secure the prompt payment and performance of the Secured Obligations, and for good and valuable consideration, the Pledgors have agreed to enter into this Agreement.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement (including the Background above):

"Agreement" means this private pledge agreement (in Dutch: *onderhandse akte van verpanding*).

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in Amsterdam, Kyiv, London, Moscow, New York, Vienna and Zurich.

"Cash Sweep Accounts" means (i) a USD denominated account in the name of DTEK INVESTMENTS LIMITED with account number [REDACTED] and (ii) Euro and USD denominated accounts in the name of DTEK HOLDINGS LIMITED, with accounts numbers [REDACTED] and [REDACTED] respectively, all maintained and administrated by the Cash Sweep Account Bank into which accounts the Group shall be obliged to: (1) pay cash interest as set out in clause 9 (*Interest*) of the Override Agreement,

## EXECUTION COPY

(2) repay or prepay any instalments as set out in clauses 7 (*Repayment*) and 8 (*Prepayment*) of the Override Agreement and/or (3) prepay any instalments in accordance with the cash sweep mechanism as set out in Schedule 5 (*Cash Sweep Mechanics*) of the Override Agreement, and such other account and/or (where the context permits) any account from time to time substituted for the same (including in each case such account as redesignated and/or renumbered from time to time) and any sub-account from time to time opened in relation to such accounts.

"**Cash Sweep Account Receivables**" means any and all receivables, interests, claims and/or rights (together with interest thereon), including accessory rights (in Dutch: *afhankelijke rechten*) and ancillary rights (in Dutch: *nevenrechten*), privileges (in Dutch: *voorrechten*) and actions pertaining thereto of any Pledgor against the Cash Sweep Account Bank in connection with any Cash Sweep Account.

"**Deposit Monies**" means all monies from time to time deposited in or standing to the credit of any Cash Sweep Account (including all monies representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such monies, all or any monies payable or repayable pursuant to such deposits or in respect of any Cash Sweep Account and in each case the debts represented thereby.

"**Enforcement Event**" means an Event of Default that is continuing, provided that it also constitutes a default (in Dutch: *verzuim*) within the meaning of Sections 6:81 and 3:248 of the Dutch Civil Code with respect to the fulfilment of the Secured Obligations.

"**Event of Default**" has the meaning attributed to such term in clause 22 (*Events of Default*) of the Override Agreement.

"**Override Agreement**" means the English law override agreement between, amongst others, DTEK ENERGY B.V. as parent, DTEK HOLDINGS LIMITED, DTEK TRADING S.A. and DTEK INVESTMENTS LIMITED as borrowers, GLAS Trust Corporation Limited as restructuring agent, Deutsche Bank AG, Amsterdam Branch as PXF agent and PXF security agent dated on or about the date hereof.

"**Parallel Debt Covenant**" means a Pledgor's covenant to pay the Restructuring Agent created pursuant to clause 26.27 (*Parallel debt (Covenant to pay the Restructuring Agent)*) of the Override Agreement.

"**Pledge**" means the pledge (in Dutch: *pandrecht*) created pursuant to this Agreement.

"**Principal Obligations**" means all monetary payment obligations (in Dutch: *verbintenissen tot betaling van een geldsom*) (whether present or future, actual or contingent, joint or several) owed by any Obligor equal to the Non-PXF Liabilities other than the obligations pursuant to the Parallel Debt Covenant.

"**Secured Obligations**" means all monetary payment obligations (in Dutch: *verbintenissen tot betaling van een geldsom*) (whether present or future, actual or contingent, joint or several) owed by any Obligor to the Pledgee pursuant to (i) the Parallel Debt Covenant as such obligations may be extended, restated, prolonged, amended or renewed from time to time including by way of increasing the amount of the facilities made available under the Finance Documents or the accession or retirement of parties thereto and (ii) this Agreement.

## EXECUTION COPY

"Termination Notice" means a notice from the Pledgee to a Pledgor and any Cash Sweep Account Bank stating that such Pledgor's authority under Clause 4.1 (*Authority to collect prior to a Termination Notice*) has been terminated.

### 1.2 Defined and referred terms in this Agreement

In this Agreement all terms and expressions shall, in the absence of contrary intention or unless otherwise defined, have the meanings attributed to such terms and expressions in the Override Agreement (including by reference to any other document) and such terms and expressions are deemed to be incorporated into this Agreement.

### 1.3 Construction

The provisions of clause 1.2 (*Construction*) of the Override Agreement shall also apply to this Agreement, *mutatis mutandis*.

### 1.4 Acceptance of the terms of the Override Agreement

Each Pledgor and the Pledgee hereby declare that prior to the execution of this Agreement it has read and understood the Override Agreement and they hereby acknowledge and accept as binding those terms and provisions that pertain to it.

### 1.5 Headings and clauses

The headings in this Agreement shall not affect its interpretation. References to Clauses in this Agreement shall, unless the context otherwise requires, be construed as references to the Clauses of this Agreement.

### 1.6 Designation

In accordance with the Override Agreement, each Pledgor and the Pledgee each designate this Agreement as a Finance Document.

## 2. UNDERTAKING TO PLEDGE

### 2.1 Undertaking to pledge

Each Pledgor and the Pledgee hereby agree that each Pledgor shall grant to the Pledgee a disclosed pledge (in Dutch: *openbaar pandrecht*) over the Cash Sweep Account Receivables, where relevant in advance (in Dutch: *bij voorbaat*), in order to secure the prompt payment of the Secured Obligations.

## 3. CREATION OF THE PLEDGE

### 3.1 Pledge and acceptance

Each Pledgor hereby grants to the Pledgee a disclosed pledge (in Dutch: *openbaar pandrecht*) over the Cash Sweep Account Receivables, where relevant in advance (in Dutch: *bij voorbaat*), in order to secure the prompt payment of the Secured Obligations. The Pledgee hereby accepts such Pledge, where relevant in advance.

### 3.2 Perfection of the Pledge

- (a) The Pledge is created by the execution of this Agreement and the delivery of a notification (in Dutch: *mededeling*) with respect to the Pledge to the Cash Sweep Account Bank;
- (b) By execution of this Agreement, the Cash Sweep Account Bank acknowledges and confirms that a notification of the Pledge is deemed received by the Cash Sweep Account Bank;

## EXECUTION COPY

### 3.3 Confirmation by the Cash Sweep Account Bank

The Cash Sweep Account Bank confirms to each Pledgor and the Pledgee:

- (a) that it hereby terminates and, to the extent necessary, waives any security interest on the Cash Sweep Account Receivables and waives any right of set-off (in Dutch: *verrekening*) and suspension in respect of any Cash Sweep Account and the Deposit Monies;
- (b) that it has not received notice of any other charge, assignment or other third party right or interest whatsoever in, of or affecting any Cash Sweep Account or the Deposit Monies;
- (c) to permit, to the extent necessary, each Pledgor to establish a pledge in respect of the Cash Sweep Account Receivables in favour of the Pledgee;
- (d) not to claim or exercise any security interest, right of set-off (in Dutch: *verrekening*), consolidation or counterclaim or any other right against or in respect of any Cash Sweep Account or the Deposit Monies, except in respect of its usual administrative and transactional fees and charges in relation to any Cash Sweep Account;
- (e) that each Pledgor is and will be authorised to assign and/or pledge the Cash Sweep Account Receivables and Deposit Monies in favour of the Pledgee;
- (f) to disclose to the Pledgee, without any reference to or further authority from a Pledgor and without any enquiry by the Cash Sweep Account Bank as to the justification for such disclosure, such information relating to any Cash Sweep Account and the Deposit Monies as the Pledgee may at any time and from time to time request;
- (g) to hold the Deposit Monies to the order of the Pledgee at any time after receiving written notice from the Pledgee that an Enforcement Event has occurred;
- (h) to pay or release all or any part of the Deposit Monies in accordance with the written instructions of the Pledgee at any time and from time to time at any time after receiving written notice from the Pledgee that an Enforcement Event has occurred;
- (i) at any time after receiving written notice from the Pledgee that an Enforcement Event has occurred to comply with the terms of any other written notice or instructions that the Cash Sweep Account Bank receives at any time and from time to time from the Pledgee in any way relating to any Cash Sweep Account or the Deposit Monies without any reference to or further authority from any Pledgor and without any enquiry by the Cash Sweep Account Bank as to the justification for or validity of such notice or instructions, notwithstanding any instructions to the contrary from any Pledgor; and
- (j) that it shall not allow any withdrawals from the Cash Sweep Account without the prior written consent of the Restructuring Agent.

### 3.5 Invalidity of Parallel Debt Covenant

Each Pledgor and the Pledgee (acting as agent for each of the Finance Parties) agree that if and to the extent that at the time of the creation of the Pledge or at any time hereafter, a Principal Obligation cannot be validly secured through the Parallel Debt Covenant, such Principal Obligation itself shall be a Secured Obligation.



## EXECUTION COPY

### 4. REPRESENTATIONS AND WARRANTIES

#### 4.1 Reliance

In addition to the representations and warranties set forth in clause 18 (*Representations*) of the Override Agreement, each Pledgor makes each of the representations and warranties set out in this Clause 4 (*Representations and warranties*) to the Pledgee and acknowledges that the Pledgee has entered into this Agreement and the documents provided for herein, in reliance on the representations and warranties set out herein.

#### 4.2 Representations and warranties

Each Pledgor represents and warrants that:

- (a) **Capacity:** it is the proprietor (in Dutch: *rechthebbende*) of the Cash Sweep Account Receivables owned by it on the date hereof and has full power to dispose (in Dutch: *beschikkingsbevoegheid*) of them;
- (b) **Ranking:** the Pledge is a first ranking pledge (in Dutch: *pandrecht eerste in rang*);
- (c) **No prior attachments and encumbrances:** no attachments (in Dutch: *beslagen*) have been levied against the Cash Sweep Account Receivables, no limited rights in rem (in Dutch: *beperkte rechten*) have been created over the Cash Sweep Account Receivables, whether or not in advance, in favour of third parties, nor have any other rights been created over the Cash Sweep Account Receivables;
- (d) **No prior transfer:** it has not previously delivered, transferred or otherwise disposed of the Cash Sweep Account Receivables in whole or in part, whether or not in advance, to a third party or made any undertaking to third parties to do any of the foregoing; and
- (e) **Transferable assets:** the Cash Sweep Account Receivables qualify as transferable assets (in Dutch: *goederen die voor overdracht vatbaar zijn*) as referred to in Section 3:228 in conjunction with Section 3:83 of the Dutch Civil Code.

### 5. GENERAL UNDERTAKINGS

#### 5.1 Duration of the undertakings

The undertakings in this Clause 5 (*General undertakings*) and Clause 6 (*Information undertakings*) are made in addition to the undertakings set forth in clause 19 (*Information undertakings*) and clause 21 (*General undertakings*) of the Override Agreement and shall remain in force until the Secured Obligations have been fully and finally paid or discharged.

#### 5.2 Affirmative undertakings

Each Pledgor shall:

- (a) promptly and correctly perform all of its obligations towards the Cash Sweep Account Bank;
- (b) at its own expense execute and do all such acts as may reasonably be required by the Pledgee on request for creating, perfecting or protecting the Pledge;
- (c) to the extent under rules of Dutch private international law the creation of the Pledge over the Cash Sweep Account Receivables is governed by any law other than Dutch law, perform all such acts as may be reasonably required to create or perfect the Pledge, to the extent requested to do so by the Pledgee; and

## EXECUTION COPY

### 5.3 Cypriot undertakings

DTEK HOLDINGS LIMITED, as required under Cypriot applicable laws, shall perform all such acts as may be reasonably required to register the security granted by it under this Agreement with the Department of Registrar of Companies and Official Receiver, of Cyprus (the "Registrar"), including but not limited to performing all steps and deliver all documentation and information as provided by paragraph 1.1 of Schedule 4 (*Conditions Subsequent*) of the Override Agreement. In the event that the Pledgee, acting in its sole discretion, opts to register such security, then DTEK HOLDINGS LIMITED shall promptly deliver to it (or the Cypriot counsel acting on its behalf or on behalf of the Lenders), in addition to the documents described in paragraph 1.1(i) of Schedule 4 of the Override Agreement, all documents and information required and/or as may be reasonably requested by the Pledgee for the purpose of effecting registration of the security with the Registrar.

### 5.4 Negative undertakings

Except as expressly provided for in the Transaction Documents, each Pledgor shall not assign, pledge, make subject to a limited right (in Dutch: *beperkt recht*), otherwise encumber or transfer the Cash Sweep Account Receivables, whether or not in advance, other than pursuant to this Agreement, or perform any act that may harm any right of the Pledgee, or permit to subsist any kind of encumbrance over the Cash Sweep Account Receivables without the Pledgee's prior written consent.

## 6. INFORMATION UNDERTAKINGS

### 6.1 Pledgors to provide all general information

At the Pledgee's written first request, each Pledgor must provide all reasonably required and available information, evidence and documents relating to the Cash Sweep Account Receivables that the Pledgee may deem reasonably necessary to exercise its rights under this Agreement (including the enforcement of its Pledge) and the perfection or protection of its security over the Cash Sweep Account Receivables. The Pledgee shall, after an Event of Default has occurred under the Override Agreement, during regular business hours be granted access to the premises of each Pledgor to inspect the books of such Pledgor relating to the Cash Sweep Account Receivables.

### 6.2 Attachments and disputes in respect of the Cash Sweep Account Receivables

Each Pledgor shall notify the Pledgee without delay of any attachment (in Dutch: *beslag*) levied on any Cash Sweep Account Receivable or any dispute with respect to any Receivable.

### 6.3 Duty to notify

Each Pledgor shall immediately:

- (a) notify the Pledgee of all circumstances, subject to the provisions set out in clause 19 (*Information Undertakings*) of the Override Agreement, of which it becomes aware that could adversely affect the interests of the Pledgee, including but not limited to an application being filed for any Pledgor's bankruptcy (in Dutch: *faillissement*) or provisional suspension of payments (in Dutch: *voorlopige surseance van betaling*) or suspension of payments (in Dutch: *surseance van betaling*) any Pledgor being adjudicated bankrupt, any Pledgor being granted (provisional) suspension of payments, any Pledgor being unable to fully pay its debts in respect of taxes or social security premiums or planning to notify the relevant authorities thereof, or an event analogous to any of the above occurring under the laws of any other jurisdiction than the Netherlands;

## EXECUTION COPY

- (b) inform any and all persons who seek to assert a right in respect of the Cash Sweep Account Receivables of the Pledge, notwithstanding the right of the Pledgee to give such notice; and
- (c) inform in writing persons such as a liquidator in bankruptcy (in Dutch: *curator*), an administrator in a (preliminary) suspension of payment (in Dutch: *bewindvoerder*) or similar officers under a jurisdiction other than the Dutch jurisdiction or persons making an attachment, of the existence of the rights of the Pledgee created pursuant to this Agreement.

## 7. GENERAL PROVISIONS

Where any discharge (whether in respect of obligations under this Agreement, any other security for any of the Secured Obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition that is subsequently avoided or must be restored on bankruptcy, liquidation or otherwise, the Pledge and the liability of each Pledgor shall continue as if there had been no discharge or arrangement and the foregoing shall serve as a condition precedent to any such discharge or arrangement.

## 8. ENFORCEMENT AND APPLICATION OF PROCEEDS

### 8.1 Entitlement of the Pledgee to enforce the Pledge

Upon the occurrence of an Enforcement Event, the Pledgee (or a Receiver or Delegate acting on its behalf) shall be entitled to enforce the Pledge and cause the Cash Sweep Account Receivables to be sold or collected, subject to mandatory provisions of Dutch law.

### 8.2 No obligation to give prior notice of enforcement

The Pledgee shall be under no obligation to give prior written notice to a Pledgor of its intention to enforce its rights in respect of all or any part of the Cash Sweep Account Receivables under this Agreement. The Pledgee shall be under no obligation to inform any other persons having any limited rights in rem (in Dutch: *beperkte rechten*) or who have levied an attachment on or against all or any part of the Cash Sweep Account Receivables of its intention to sell all or any part of the Cash Sweep Account Receivables, nor is the Pledgee required to make such communication when it has proceeded to enforce its rights under this Agreement.

### 8.3 Waiver of rights

- (a) Each Pledgor hereby renounces its right to request the court to order that the Cash Sweep Account Receivables should be sold in a manner different from the manner referred to in Section 3:250 of the Dutch Civil Code.

- (b) Each Pledgor hereby waives its rights under Section 3:234 of the Dutch Civil Code.

### 8.4 Application of proceeds

Without prejudice to the provisions of Section 3:253 of the Dutch Civil Code, the Pledgee shall apply all proceeds from the enforcement of the Pledge in or towards discharging the Secured Obligations in accordance with the relevant provisions of Schedule 6 (*Intercreditor Principles*) of the Override Agreement.

## 9. POWER OF ATTORNEY

### 9.1 Pledgors granting a power of attorney to the Pledgee

Each Pledgor hereby irrevocably appoints the Pledgee as its attorney – with full power to

## EXECUTION COPY

appoint substitutes – in order to, on behalf of such Pledgor, at any time and from time to time, carry out any and all acts relating to this Agreement, and to perform all acts, and to draw up and execute all further documents that the Pledgee, in its sole discretion, may deem necessary in view of the performance of the obligations under and in connection with this Agreement and to enable or to assist in any way in the exercise of any power of sale of the Cash Sweep Account Receivables whether arising pursuant to this Agreement, implied by Dutch law or otherwise.

### 9.2 Limitation of power of attorney

The Pledgee shall only exercise the power of attorney referred to in this Clause 9 (*Power of attorney*) following the occurrence and during the continuation of an Event of Default, solely for the purposes of preservation or perfection of the Pledge or to secure the performance of an obligation of any Pledgor pursuant to this Agreement, provided that the relevant Pledgor fails or unreasonably refuses to perform after having received notice from the Pledgee to act on the matter for which the Pledgee wishes to use the power of attorney set forth in this Clause 9 (*Power of attorney*).

### 9.3 Pledgee may act as the Pledgor's counterparty

Each Pledgor and the Pledgee agree that the Pledgee may act as counterparty to any agreement a Pledgor may enter into when exercising the powers of attorney granted by such Pledgor to the Pledgee pursuant to this Agreement.

## 10. RELEASE AND TERMINATION OF THE PLEDGE

### 10.1 Release

The Pledgee hereby agrees to release the Pledge if the Secured Obligations (together with all amounts due from any Pledgor hereunder) have been fully and finally paid or discharged and if all conditions for the release of security interests by the Pledgee referred to in the Finance Documents have been fulfilled. In such event the Pledgee agrees – at the Pledgors' request and expense – to sign any documents and to take any other action as a Pledgor may reasonably request to accomplish and evidence the release of the Pledge.

### 10.2 Termination

The Pledgee will be entitled to (partially or wholly) terminate (in Dutch: *opzeggen*) the Pledge in accordance with Section 3:81 paragraph 2 under (d) of the Dutch Civil Code. The Pledgee can only terminate by providing a written notice to a Pledgor, such written notice shall not be unreasonably delayed or withheld.

## 11. EXCLUSION OF LIABILITY AND INDEMNIFICATION

### 11.1 Exclusion of liability

Except to the extent of its wilful misconduct or gross negligence, the Pledgee shall not be liable for any loss or damage resulting from any sale or disposal of the Cash Sweep Account Receivables (or any interest therein), or arising out of the exercise of or failure to exercise any of its powers pursuant to this Agreement, or for any negligence or default in the payment of any amount or notification to any Pledgor of any such matter, or arising out of any failure to collect in full or in part any of the Cash Sweep Account Receivables, or for any other loss whatsoever in connection with the Cash Sweep Account Receivables.

### 11.2 Indemnification

Except to the extent of the wilful misconduct or gross negligence of the Pledgee, each Pledgor shall, jointly and severally, indemnify (in Dutch: *schadeloos stellen*) the Pledgee against, and hold the Pledgee harmless from (in Dutch: *vrijwaren*), all losses, documented costs and damages of every nature and kind whatsoever, sustained or suffered by the Pledgee or for

## EXECUTION COPY

which the Pledgee is liable as a result of the Pledge, including such losses, documented costs and damages claimed by third parties and including legal costs to defend such claims.

### 12. CONTINUATION OF RIGHTS

Each Pledgor hereby acknowledges that, except as may be otherwise agreed between the Parties, any change, amendment, release, waiver or modification of the terms and conditions of this Agreement and/or the Finance Documents shall not discharge or otherwise prejudice the rights created pursuant to this Agreement, nor shall the liability of each Pledgor hereunder be in any way lessened or affected by such change, amendment, release, waiver or modification except to the extent it follows expressly from any such change, amendment, release, waiver or modification.

### 13. REPLACEMENT OF THE PLEDGEE

#### 13.1 Consent to transfer of rights

Subject to the terms of the Finance Documents, the Pledgee may transfer all or part of its contractual rights and obligations pursuant to this Agreement by means of assignment (in Dutch: *cessie*), transfer of debt (in Dutch: *schuldoverneming*) or a transfer of contract (in Dutch: *contractsoverneming*) to either a Lender and/or a Restructuring Agent. Each Pledgor hereby in advance irrevocably (i) grants its consent (in Dutch: *toestemming*) to any such assignment or transfer by the Pledgee, and (ii) agrees to co-operate with (in Dutch: *verleent medewerking aan*) any such assignment or transfer by the Pledgee.

#### 13.2 Transferee's entitlement to the Pledge

Each Pledgor and the Pledgee explicitly agree and declare that upon transfer, assignment or pledge of the Secured Obligations, or a part thereof, the transferee, assignee or pledgee will become entitled to the Pledge.

#### 13.3 Undertaking to transfer all rights and powers

If the Pledgee is replaced in the manner set forth in the Finance Documents, each Pledgor shall procure that any successor of the Pledgee shall become vested with all the rights and powers of the Pledgee pursuant to this Agreement.

### 14. RECOURSE AND SUBROGATIONS (NON-PETITION)

#### 14.1 Non-petition

Unless:

- (i) all amounts that may be or become payable by the Obligors under the Finance Documents have been irrevocably paid in full; or
- (ii) the Pledgee otherwise directs,

each Pledgor will not, after a claim has been made or by virtue of any payment or performance by it of any obligations under the Finance Documents:

- (a) exercise any right of recourse (in Dutch: *regres*) or subrogation (in Dutch: *subrogatie*);
- (b) claim, rank, prove or vote as a creditor of any Obligor in competition with any Finance Party; or
- (c) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off (in Dutch: *verrekening*) against any Obligor.

## EXECUTION COPY

### 14.2 Separate account

Each Pledgor must hold in a segregated account and promptly pay or transfer to the Pledgee any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Pledgee under this Clause 14 (*Recourse and subrogation (non-petition)*).

## 15. EVIDENCE OF SECURED OBLIGATIONS

An excerpt from the Pledgee's books and records (including any internal platform upon which the Pledgee records and tracks respective loan amounts) shall constitute full and conclusive evidence of the existence and amount of the Secured Obligations, subject to evidence to the contrary.

## 16. WAIVER

Each Pledgor irrevocably waives, to the fullest extent permitted by law, any right it may have at any time:

- (a) to rescind (in Dutch: *ontbinden*) this Agreement pursuant to Section 6:265 of the Dutch Civil Code;
- (b) to suspend (in Dutch: *opschorten*) any of its obligations under this Agreement pursuant to Section 6:52, 6:262 or 6:263 of the Dutch Civil Code or on any other ground; and
- (c) to nullify (in Dutch: *vernietigen*) this Agreement or request the change thereof pursuant to Section 6:228 of the Dutch Civil Code.

## 17. COSTS AND EXPENSES

All documented costs and expenses shall be borne by each Pledgor in the manner as set forth in clause 17 (*Costs and expenses*) of the Override Agreement.

## 18. NOTICES

### 18.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, email, or letter.

### 18.2 Addresses

The address, email address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Pledgors:

Address:

Email address:

Fax:

Attention of: Corporate Finance Department;

## EXECUTION COPY

(b) in the case of the Pledgee:

Address: [REDACTED]  
Email address: [REDACTED]  
Fax: [REDACTED]  
Attention of: Transaction Management Group; and

(c) in the case of the Cash Sweep Account Bank:

Address: [REDACTED]  
Email address: [REDACTED]  
Attention of: Kelly Tse / Judith Spiegelaar,

or any substitute address, email address or fax number or department or officer as a Party may notify the other Party by not less than five (5) Business Days' notice.

### 18.3 Delivery

Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective if received in legible form by the addressee and, if a particular department or officer is specified as part of its address details provided under Clause 18.2 (*Addresses*), if addressed to that department or officer.

### 18.4 Language

Any notice given or documents provided under or in connection with this Agreement must be in English or if not in English, and if so required by the Pledgee, accompanied by a certified translation into English and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

## 19. PARTIAL INVALIDITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this Agreement shall be ineffective only in that jurisdiction and only to that extent, without invalidating the remainder of this Agreement. Each Pledgor and the Pledgee shall in such event replace the illegal, invalid or unenforceable provision by a provision that is legal, valid and enforceable, and the effect of which, given the contents and purpose of this Agreement, is to the greatest extent possible similar to the illegal, invalid or unenforceable provision.

## 20. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Pledgee, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or the Finance Documents.

## 21. AMENDMENTS

The Parties hereby agree that any provisions of this Agreement may only be amended in writing, with the consent of each Party.

## EXECUTION COPY

### 22. COUNTERPARTS

This Agreement may be executed in any number of counterparts by the Parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

### 23. GOVERNING LAW

#### 23.1 Governing law

This Agreement and the relationship (including any non-contractual obligations to the extent permitted by law) between the Parties pursuant to this Agreement are governed by and interpreted in accordance with Dutch law.

#### 23.2 Power of attorney

If a Party is represented by an attorney in connection with the execution of this Agreement or any agreement or document pursuant hereto, and the power of attorney is expressed to be governed by Dutch law, it is hereby expressly acknowledged and accepted by the other Parties that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his authority shall be governed by Dutch law, in accordance with Section 14 of the Hague Convention on the Law Applicable to Agency of 14 March 1978.

### 24. JURISDICTION

#### 24.1 Exclusive jurisdiction

The Parties agree that the courts of Amsterdam are (subject to Clause 24.2 (*Non exclusive jurisdiction for the Pledgee*)) to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute") and for such purpose irrevocably submit to the jurisdiction of the courts of Amsterdam.

#### 24.2 Non exclusive jurisdiction for the Pledgee

The agreement contained in Clause 24.1 (*Exclusive jurisdiction*) is included for the benefit of the Pledgee only. Accordingly, notwithstanding the exclusive agreement in Clause 24.1 (*Exclusive jurisdiction*) the Pledgee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction where an asset of the relevant Pledgor is located or where the relevant Pledgor is incorporated. To the extent allowed by law, the Pledgee may take concurrent proceedings in any number of jurisdictions.

#### 24.3 Waiver of objections

Each of the Parties irrevocably waives any objections to the jurisdiction of any court referred to in this Clause 24 (*Jurisdiction*).

(signature page to follow)



## EXECUTION COPY

This Agreement has been executed by the authorised representatives of the Parties on the date first written above.

### The Pledgors

**DTEK HOLDINGS LIMITED**



By: *Timchenko Maksym*  
Title: Authorised representative

## **EXECUTION COPY**

### **The Pledgors**

**DTEK INVESTMENTS LIMITED**



By: Maksym Timchenko  
Title: Director

**EXECUTION COPY**

**The Pledgee**



**CORPORATION**

Anthony Stanford  
Transaction Manager

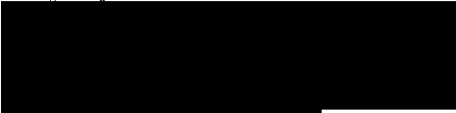
\_\_\_\_\_  
Representative

**EXECUTION COPY**

**The Cash Sweep Account Bank**

**DEUTSCHE BANK AG, AMSTERDAM  
BRANCH /**

By:  
Title:

  
Sander Stuijt

  
Sven de Zoeten