



**Registration of a Charge**

Company name: **SO ENERGY TRADING LIMITED**

Company number: **09263295**

Received for Electronic Filing: **20/12/2019**



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**Details of Charge**

Date of creation: **20/12/2019**

Charge code: **0926 3295 0003**

Persons entitled: **AXPO SOLUTIONS AG**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **WE 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 PART OF THE**

**CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE  
CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO  
EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**

Certified by:

**DENTONS UK AND MIDDLE EAST LLP**



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

Company number: 9263295

Charge code: 0926 3295 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th December 2019 and created by SO ENERGY TRADING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th December 2019 .

Given at Companies House, Cardiff on 23rd December 2019

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

**EXECUTION VERSION**

## **Debenture**

**Dated 20 December 2019**

**SO Energy Trading Limited**  
(the Chargor)

**Axpo Solutions AG**  
(Axpo)

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# Debenture

**Dated 20 December 2019**

## Between

- (1) **SO Energy Trading Limited**, a company registered in England with number 09263295 whose registered office is at 107 Power Road, London, England, W4 5PY (the **Chargor**); and
- (2) **Axpo Solutions AG**, a company registered in Switzerland with company number CHE - 105.779.348, whose registered office is at Parkstrasse 23, CH-5401, Baden, Switzerland (**Axpo**).

## Recitals

- A Axpo has agreed to enter into certain transactions with the Chargor pursuant to, and subject to the terms of, the Transaction Documents.
- B It is a condition precedent to the effectiveness of the Wholesale Agreement that this Debenture is entered into.
- C The Chargor has agreed to provide Security to Axpo to secure the payment and discharge of the Secured Liabilities.

## 1 Definitions and construction

### 1.1 Definitions

Words and expressions defined in the Wholesale Agreement shall have the same meanings in this Debenture unless they are expressly defined in it and, in addition, in this Debenture:

**Act** means the Law of Property Act 1925.

**Account Bank** means any bank at which a Controlled Account is held.

**Approved Person means:**

- (a) any of BDO, Deloitte, Ernst & Young, Grant Thornton, KPMG or PricewaterhouseCoopers; or
- (b) if none of the persons specified in paragraph (a) above accepts a mandate to act as administrator or Receiver under this Debenture within five (5) Banking Days of an offer to so act, then such other person as is (in the opinion of Axpo acting reasonably) suitably qualified for that role.

**Assigned Agreements** means:

- (a) the Customer Contracts; and
- (b) any other agreement or document to which the Chargor is a party that is designated as an Assigned Agreement by Axpo and the Chargor,

in each case, as amended, varied, novated, supplemented and replaced from time to time.

**Assigned Agreement Rights** means:

- (a) all claims and all moneys which might at any time be or become paid or payable to or for the account of the Chargor under or in respect of any Assigned Agreement, including all claims for damages and the proceeds of all claims, awards, decisions and judgments at any time received or receivable by the Chargor and any return of any sums which might at any time be or become paid or payable to the Chargor;
- (b) all rights and remedies of the Chargor under or in respect of any Assigned Agreement, whether expressly provided in such Assigned Agreement or otherwise, including the right to compel performance of any Assigned Agreement; and
- (c) all guarantees, indemnities, mortgages, securities, assignments, charges and other security of whatever nature now or in the future held by the Chargor in respect of any Assigned Agreement, including all moneys which might at any time be or become paid or payable to or for the account of the Chargor under them and all rights and remedies for enforcing the same or compelling performance of them.

**Authorisation** means any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**Controlled Account** means:

- (a) the Lockbox Account;
- (b) the Operating Account; and
- (c) any other bank account designated as an Controlled Account by Axpo and the Chargor.

**Default Rate** means the Interest Rate as defined in the NBP Agreement.

**Delegate** means any delegate, agent, attorney or trustee appointed by Axpo.

**Derivative Contract** means any master agreement, schedule, transaction, confirmation, novation or other instrument (other than a Trading Document) entered into by the Chargor and a counterparty from time to time in connection with protection against or benefit from fluctuation in any rate or price.

**Enforcement Event** means:

- (a) the occurrence of an Event of Default with respect to the Chargor;
- (b) a failure by the Chargor to pay, on the due date, any amount payable by it under the Wholesale Agreement on or after the expiry or termination of, or on or after the service of a termination notice under, the Wholesale Agreement; or
- (c) a failure by the Chargor to pay, on the due date, any amount payable by it under a Transaction Document on or after the occurrence of a Close-Out Event (as defined in the Master Netting Agreement).

**Equipment** means all fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment and the benefit of all related Authorisations, agreements and warranties.

**Intellectual Property** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Affiliate (which may now or in the future subsist).

**Investments** means:

- (a) all or any stocks, shares, bonds and securities of any kind (marketable or otherwise), negotiable instruments and warrants and any other financial instruments (as defined in the Regulations); and
- (b) all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise which at any time accrue to or are offered or arise in respect of them,

and includes all dividends, interest and other distributions paid or payable on or in respect of them.

**Land** has the same meaning as it has in section 205(1) of the Act.

**Receiver** means a receiver appointed pursuant to this Debenture or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if Axpo is permitted by law to appoint an administrative receiver, includes an administrative receiver.

**Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements, and **Regulation** means any of them.

**Secured Liabilities** means the liabilities of the Chargor to Axpo under or pursuant to the Transaction Documents.

**Security** means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

**Security Assets** means all of the assets of the Chargor which are the subject of any Security created or to be created by this Debenture.

**Security Period** means the period starting on the date of this Debenture and ending on the date on:

- (a) either:
  - (i) all of the Secured Liabilities have been fully and finally discharged; or
  - (ii) following the expiry of any CSA Notice Period, the Chargor has provided and/or replaced Eligible Credit Support (such term as defined in the Credit



Support Annex) to Axpo in accordance with the terms of the Credit Support Annex; and

- (b) it is under no commitment, obligation or liability (actual or contingent) to provide any financial accommodation to, or to enter into any Transactions with, the Chargor pursuant to the Transaction Documents.

**Trading Receivables** means any:

- (a) Final Net Settlement Amount (as defined in the Master Netting Agreement);
- (b) Termination Amount (as defined in the GTMA);
- (c) Termination Amount (as defined in the NBP Agreement); and/or
- (d) equivalent amount or payment (howsoever described) under any other Trading Document,

owed to the Chargor.

**Wholesale Agreement** means the wholesale agreement dated on or around the date of this Debenture between the Chargor and Axpo.

## 1.2 Construction

- 1.2.1 The principles of construction set out in clause 1.2 (*Interpretation*) of the Wholesale Agreement apply to this Debenture, insofar as they are relevant to it and subject to any necessary changes, as they apply to the Wholesale Agreement.
- 1.2.2 Unless a contrary intention appears, any reference in this Debenture to:
  - (a) this **Debenture** is a reference to this Debenture as amended, varied, novated, supplemented and replaced from time to time;
  - (b) the **Chargor**, **Axpo** or a **Receiver** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted); and
  - (c) **Axpo** or a **Receiver** (except for the references in Clause 15 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

## 1.3 Third party rights

- 1.3.1 Unless expressly provided to the contrary in this Debenture, a person who is not a party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Debenture.
- 1.3.2 The parties to this Debenture may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Debenture without the consent of any person that is not a party (without prejudice to the terms of the other Transaction Documents).

- 1.3.3 Any person described in Clauses 10 (*Protection of purchasers*) or Clause 11 (*Protection of Axpo and Receivers*) may, subject to this Clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Debenture which expressly confers rights on it.

#### **1.4 Effect as a deed**

This Debenture shall take effect as a deed even if it is signed under hand on behalf of Axpo.

#### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

The terms of the other Transaction Documents and of any side letters between any parties in relation to any Transaction Document are incorporated in this Debenture to the extent required to ensure that any purported disposition of an interest in Land contained in this Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **2 Covenant to pay**

The Chargor covenants with Axpo that it will on demand pay and discharge the Secured Liabilities when due.

### **3 Creation of Security**

#### **3.1 Land**

The Chargor charges by way of fixed charge any right, title or interest which it has now or may subsequently acquire to or in any other Land.

#### **3.2 Investments**

The Chargor mortgages or (if or to the extent that this Debenture does not take effect as a mortgage) charges by way of fixed charge all its Investments, including those held for it by any nominee.

#### **3.3 Equipment**

The Chargor charges by way of fixed charge all its Equipment in so far as it is not charged by way of legal mortgage under Clause 3.1 (*Land*).

#### **3.4 Controlled Account**

- 3.4.1 The Chargor assigns absolutely all amounts standing to the credit of each Controlled Account and all of its right, title and interest in and relating to each Controlled Account.

#### **3.5 Intellectual Property**

The Chargor charges by way of fixed charge all its Intellectual Property.

#### **3.6 Goodwill**

The Chargor charges by way of fixed charge its goodwill.

### **3.7 Uncalled capital**

The Chargor charges by way of fixed charge its uncalled capital.

### **3.8 Authorisations**

The Chargor charges by way of fixed charge the benefit of all Authorisations it holds in relation to any Security Asset.

### **3.9 Derivative Contracts**

The Chargor charges by way of fixed charge its right to receive all moneys payable under any Derivative Contract.

### **3.10 Trading Receivables**

The Chargor charges by way of fixed charge its right to receive all Trading Receivables.

### **3.11 Assigned Agreements**

The Chargor assigns absolutely all its rights and interests under:

- (a) the Assigned Agreements; and
- (b) the Assigned Agreement Rights.

### **3.12 Insurances**

The Chargor assigns absolutely all its rights and interests under all contracts and policies of insurance.

### **3.13 Contractual rights**

The Chargor assigns absolutely all rights under all deeds and agreements to which it is a party and which are not mortgaged, charged by way of fixed charge or assigned under any of Clauses 3.1 (*Land*) to 3.12 (*Insurances*) (inclusive), other than the Transaction Documents and any Derivative Contract.

### **3.14 Other assets**

- 3.14.1 The Chargor charges by way of floating charge all its present and future business, undertaking and assets which are not effectively mortgaged, charged by way of fixed charge or assigned under this Clause 3.
- 3.14.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Debenture.

### **3.15 Trust**

If or to the extent that the assignment or charging of any Security Asset is ineffective because of a prohibition on that assignment or charging, the Chargor holds it on trust for Axpo.

## **4 Nature of Security created**

### **4.1 General**

The Security created under this Debenture is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) (except in the case of assets which are the subject of a legal mortgage under this Debenture) over all present and future assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- (c) in favour of Axpo; and
- (d) with full title guarantee.

### **4.2 Security over Derivative Contracts**

The Security created under this Debenture over any Derivative Contract shall apply net of set-off or combination of accounts owed under, and in accordance with the terms of, that Derivative Contract.

## **5 Conversion of floating charge**

### **5.1 Conversion on notice**

Subject to Clause 5.2 (*Limitation*), Axpo may by notice to the Chargor at any time during the Security Period convert the floating charge created by this Debenture into a fixed charge in respect of any Security Asset specified in that notice if:

- (a) an Enforcement Event is continuing; or
- (b) Axpo considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy (including as a result of the appointment by Ofgem of a supplier of last resort in relation to any of the Customers).

### **5.2 Limitation**

Clause 5.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

### **5.3 Automatic conversion**

The floating charge created by this Debenture will convert automatically into fixed charges:

- (a) if Axpo receives notice of an intention to appoint an administrator of the Chargor;
- (b) if any steps are taken, (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional

liquidator, administrator or Receiver in respect of the Chargor over all or any part of its assets, or if such person is appointed;

- (c) if the Chargor creates or attempts to create Security over all or any of the Security Assets;
- (d) on the crystallisation of any other floating charge over the Security Assets;
- (e) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- (f) in any other circumstances prescribed by law.

## **6 Positive covenants**

The covenants in this Clause 6 remain in force from the date of this Debenture until the expiry of the Security Period.

### **6.1 Land**

6.1.1 The Chargor must, within fourteen (14) days after receipt by it of any material application, requirement, order or notice served or given by any public or local or any other authority with respect to its Land (or any part of it):

- (a) deliver a copy to Axpo; and
- (b) if requested by Axpo, inform Axpo of the steps taken or proposed to be taken to comply with the relevant requirements.

6.1.2 The Chargor shall promptly notify Axpo in writing if the Chargor:

- (a) intends to acquire any estate or interest in Land; or
- (b) acquires any estate or interest in Land,

in each case giving such details as Axpo may require including all facilities within the power of the Chargor to enable Axpo or its lawyers (at the expense of the Chargor to the extent such expenses are reasonably and properly incurred) to:

- (a) carry out investigations of title to the Land;
- (b) make such enquiries in relation to any part of the Land as a prudent mortgagee might carry out; and
- (c) if required by Axpo, provide it with a report on title of the Chargor to the Land concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of that nature.

6.1.3 If the Chargor acquires any freehold or leasehold property after the date of this Debenture it shall:

- (a) promptly on request by Axpo and at the cost of the Chargor, execute and deliver to Axpo a legal mortgage in favour of Axpo of that property in any form which Axpo may

require (acting reasonably) and submit relevant applications, do relevant searches and issue such notices as is necessary to perfect the Axpo's interest under the legal mortgage; and

- (b) if applicable, ensure that the provisions of Clause 14.2 (*Application to Land Registrar*) are complied with in relation to that legal mortgage.

## **6.2 Preservation of the Security Assets**

The Chargor shall:

- (a) keep all Land, all Equipment and all other tangible assets which form part of the Security Assets in the same or better condition as that in which it is on the date of this Debenture and permit Axpo free access at all reasonable times and on reasonable notice to view their state and condition;
- (b) preserve, maintain and renew as and when necessary all Intellectual Property which forms part of the Security Assets;
- (c) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or its use or enjoyment;
- (d) pay all tax, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, Axpo may pay it);
- (e) notify Axpo of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened; and
- (f) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

## **6.3 Notice to Assignment of Controlled Accounts**

6.3.1 After executing this Debenture, the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to the Account Bank in relation to the Lockbox Account and the Operating Account in the form set out in Part 1 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*);
- (b) use reasonable endeavours to procure that the Account Bank promptly acknowledges that notice in the form set out in Part 2 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*), or in any other form agreed by Axpo.

6.3.2 After opening any Controlled Account (other than the Lockbox Account and the Operating Account), the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to the relevant account bank in relation to that Controlled Account and in

the form set out in Part 1 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*);

- (b) use reasonable endeavours to procure that the relevant account bank promptly acknowledges that notice in the form set out in Part 2 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*), or in any other form agreed by Axpo.

#### **6.4 Notice of Assignment of insurances**

After executing this Debenture (and following the taking out of any insurance after the date of this Debenture), the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to insurers in respect of the insurances substantially in the form set out in Part 1 of Schedule 4 (*form of notice of assignment of insurances*); and
- (b) use reasonable endeavours to procure that each party served with a notice under Clause 6.4(a) promptly acknowledges that notice in substantially the form set out in Part 2 of Schedule 4 (*form of notice of assignment of insurances*) or in any other form agreed by Axpo.

#### **6.5 Notice of Assignment of Customer Contracts**

The Chargor shall:

- (a) upon notice by Axpo following an Enforcement Event that is continuing, and upon request by Axpo to do so, give notice to the other parties to the Customer Contracts in the form set out in Schedule 2 (*Form of notice of assignment of Assigned Agreements*) and deliver to Axpo a copy of each notice;
- (b) use all reasonable endeavours to procure that each person served with a notice under paragraph (a) above countersigns such notice and returns it to Axpo within 10 Banking Days of the notice having been sent.

#### **6.6 Notice of Assignment of Assigned Agreements (other than Customer Contracts)**

After executing this Debenture (and following the execution of any Assigned Agreement, other than a Customer Contract, after the date of this Debenture), the Chargor shall:

- (a) give notice to the other parties to each Assigned Agreement (other than a Customer Contract) in the form set out in Schedule 2 (*Form of Notice of Assignment*) and deliver to Axpo a copy of each notice;
- (b) use all reasonable endeavours to procure that each person served with a notice under paragraph 6.5(a) above countersigns such notice and returns it to Axpo within 10 Banking Days of the notice having been sent.

#### **6.7 Payments without deduction**

The Chargor covenants with Axpo that all payments to be made by it under this Debenture shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## **7 Negative covenants**

The covenants in this Clause 7 remain in force from the date of this Debenture until the expiry of the Security Period, and are without prejudice to any similar covenants agreed between the parties in the Wholesale Agreement.

### **7.1 Disposals**

Except as permitted in the Wholesale Agreement, or as otherwise agreed to in writing by Axpo, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan, or otherwise dispose of any Security Asset, or enter into an agreement to make any such disposal.

### **7.2 Negative pledge**

Except as permitted in the Wholesale Agreement, or as otherwise agreed to in writing by Axpo, the Chargor shall not create or permit to subsist any Security over any Security Asset.

### **7.3 Further Preservation of the Security Assets**

The Chargor shall not without the written consent of Axpo:

- (a) enter into any onerous obligation or restriction affecting any Security Asset;
- (b) (acting reasonably) in relation to any Land forming part of the Security Assets:
  - (i) part with possession of it, confer on any other person any right or licence to occupy it or grant any licence to assign, sub-let or create any Security over it;
  - (ii) exercise any of the powers conferred by sections 99 and 100 of the Act of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases;
  - (iii) vary, assign or otherwise dispose of or allow to be forfeited any leasehold interest;
  - (iv) agree any rent review;
  - (v) make any structural or material alteration, or do or allow anything to be done which falls within the definition of development in section 55 of the Town and Country Planning Act 1990;
  - (vi) allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor, or create or permit to arise any interest which overrides under the Land Registration Act 2002 (and the Chargor shall reimburse Axpo for its reasonable costs of lodging:
    - (A) a caution against first registration of the title to that Land; or
    - (B) if that Land is unregistered, a land charge); or
  - (vii) make an application, consent to or acquiesce in the application by any third party, to the Land Registry to enter any matter on the register of title;



- (c) in relation to the Investments:
  - (i) permit any person other than the Chargor, Axpo or its nominee or any purchaser to be registered as holder of any of the Investments; or
  - (ii) permit a variation of any rights attaching to any of those Investments;
- (d) in relation to any uncalled capital of the Chargor, call it up or receive it in advance of calls unless Axpo otherwise directs, nor apply it, when paid, otherwise than in payment of the Secured Liabilities or as Axpo otherwise directs; or
- (e) take any Security in connection with its liabilities under this Debenture from any guarantor of, or provider of Security for, any of the Secured Liabilities.

## **8 Enforcement**

### **8.1 When Security becomes enforceable**

The Security created by this Debenture shall become enforceable on the occurrence of an Enforcement Event.

### **8.2 Powers on enforcement**

8.2.1 At any time after the Security created by this Debenture has become enforceable Axpo may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) sell or otherwise dispose of the Security Assets, and otherwise exercise all the other powers and rights conferred on mortgagees by the Act, as varied and extended by this Debenture, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act;
- (c) to the extent that any Security Asset constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to Axpo insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18;
- (d) subject to Clause 9.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets; and
- (e) appoint an administrator of the Chargor.

8.2.2 The value of any Financial Collateral appropriated pursuant to paragraph (c) of Clause 8.2.1 shall be:

- (a) in the case of cash, its face value at the time of appropriation; and
- (b) in the case of financial instruments or other Financial Collateral, their market price at the time of appropriation as determined by Axpo (or an agent, Delegate, attorney or Receiver appointed by it) by reference to a public index or by such other process as Axpo (or an agent, Delegate, attorney or Receiver appointed by it) may select, including independent valuation.

In each case, the parties agree that the method of valuation provided for in this Debenture shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

- 8.2.3 Axpo agrees that any person it appoints pursuant to paragraph (d) or (e) of Clause 8.2.1 shall be an Approved Person.

### **8.3 Disposal of the Security Assets**

In exercising the powers referred to in paragraph (a) of Clause 8.2 (*Powers on enforcement*), Axpo or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### **8.4 Application of moneys**

- 8.4.1 Any moneys received or recovered by Axpo or a Receiver pursuant to this Debenture after the Security created by it has become enforceable shall, to the extent permitted by law, be applied in the following order of priority:

- (a) in or towards the pro rata payment or provision for:
    - (i) all costs and expenses incurred by Axpo under or in connection with this Debenture; and
    - (ii) all sums owing to a Receiver;
  - (b) in or towards the discharge of the Secured Liabilities in any order chosen by Axpo; and
  - (c) then, in the payment of any surplus to the Chargor or other person entitled to it,
- and section 109(8) of the Act shall not apply.

- 8.4.2 Clause 8.4.1 will override any appropriation made by the Chargor.

### **8.5 Set-off**

Axpo may, at any time after the occurrence of an Enforcement Event, set-off any Trading Receivables against all or any of the Secured Liabilities that are then due and payable.

## **9 Appointment and powers of Receivers**

### **9.1 Method of appointment and removal**

- 9.1.1 Axpo may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.
- 9.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by Axpo pursuant to this Debenture may be made in writing under the hand of any officer or manager of Axpo (subject to any requirement for a court order in the removal of an administrative receiver).

## **9.2 Powers of Receiver**

Every Receiver shall have all the powers:

- (a) of Axpo under this Debenture;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Security Assets or any of them (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its only absolute owner.

## **9.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Debenture.

## **9.4 Receiver as agent**

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

## **9.5 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and Axpo, and the maximum rate specified in section 109(6) of the Act shall not apply.

## **10 Protection of purchasers**

No purchaser or other person dealing with Axpo or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of Axpo or any Receiver to exercise any of the powers conferred by this Debenture has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to Axpo, to any Receiver or to any other person.

## **11 Protection of Axpo and Receivers**

### **11.1 Exclusion of liability**

None of Axpo, any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 16 (*Currency*); or
- (d) for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Chargor); or
- (e) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

## **11.2 General indemnity**

11.2.1 The Chargor shall indemnify Axpo, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to all or any of the Security Assets;
- (b) any payment relating to or in respect of all or any of the Security Assets which becomes payable at any time by any of them;
- (c) any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Debenture;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Debenture; and
- (e) any breach by the Chargor of any of its covenants or other obligations to Axpo,

except in the case of gross negligence or wilful misconduct on the part of that person.

11.2.2 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

## **11.3 Indemnity out of the Security Assets**

Axpo, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.2 (*General indemnity*).

## **12 Preservation of Security**

### **12.1 Reinstatement**

If any payment by the Chargor or discharge given by Axpo (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liabilities of the Chargor and the Security created by this Debenture shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) Axpo shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

### **12.2 Waiver of defences**

Neither the Security created by this Debenture nor the obligations of the Chargor under this Debenture will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor or Axpo) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Transaction Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Transaction Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

### **12.3 Chargor intent**

Without prejudice to the generality of Clause 12.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Debenture shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;

- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

#### **12.4 Immediate recourse**

The Chargor waives any right it may have of first requiring Axpo (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Debenture. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

#### **12.5 Appropriations**

During the Security Period Axpo may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.4 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Liabilities.

#### **12.6 Deferral of Chargor's rights**

During the Security Period and unless Axpo otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Debenture or the enforcement of the Security created by this Debenture:

- (a) to receive or claim payment from, or be indemnified by the Parent;
- (b) to claim any contribution from or exercise any right of set-off against, any guarantor of, or indemnifier or provider of Security in respect of the Chargor's obligations under the Transaction Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of Axpo under any Transaction Document or of any guarantee or Security taken pursuant to, or in connection with, the Transaction Documents by Axpo;

- (d) to exercise any right of set-off against the Parent; and/or
- (e) to claim or prove as a creditor of the Parent in competition with Axpo.

## **12.7 Additional Security**

This Debenture is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to Axpo.

## **12.8 New accounts**

If Axpo receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by or on behalf of the Chargor to Axpo:

- (a) shall be credited or be treated as having been credited to the new account of the Chargor; and
- (b) shall not operate to reduce the Secured Liabilities at the time when Axpo received or was deemed to have received such notice.

## **13 Tacking**

For the purposes of section 94(1) of the Act and section 49(3) of the Land Registration Act 2002 Axpo confirms that it shall make further advances or enter into further Transactions on the terms and subject to the conditions of the Transaction Documents.

## **14 Further assurance**

### **14.1 Registration at Companies House**

The Chargor consents to the registration of this Debenture at Companies House pursuant to Part 25 of the Companies Act 2006.

### **14.2 Application to Land Registrar**

The Chargor consents to the registration against the registered title of any freehold or leasehold property that it acquires of:

- (a) a restriction in the following terms:

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated \*\* date of Debenture ] in favour of Axpo Solutions AG referred to in the charges register or their conveyancer. (Form P)"; and
- (b) a notice that Axpo is under an obligation to make further advances on the terms and subject to the conditions of the Transaction Documents.

### **14.3 Further action**

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which Axpo may require in order to:

- (a) give effect to the requirements of this Debenture;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Debenture;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Debenture with any other Security over any assets of the Chargor; or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on Axpo, any Receiver or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

### **14.4 Deposit of documents**

The Chargor covenants that, on the date of this Debenture and at all times during the Security Period as soon as it receives them (and in any event as soon as Axpo so requests), it shall deposit with Axpo, in respect of or in connection with the Security Assets:

- (a) all deeds, stocks, share certificates, certificates and other documents of or evidencing title;
- (b) signed undated transfers of the Investments, completed in blank; and
- (c) any other documents which Axpo may from time to time require for perfecting its title, or the title of any purchaser,

all of which will be held by Axpo at the risk and expense of the Chargor.

### **14.5 Law of Property (Miscellaneous Provisions) Act 1994**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 14.

## **15 Power of attorney**

The Chargor irrevocably and by way of security appoints each of:

- (a) Axpo;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of Axpo; and
- (c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of an Enforcement Event or following the failure by the Chargor to comply with a



request from Axpo, to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Debenture. The Chargor agrees, promptly on the request of Axpo or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

## **16 Currency**

### **16.1 The Spot Rate**

In this Clause 16, the **Spot Rate** means the spot rate of exchange of Lloyds Bank plc for the purchase of any currency with any other currency in the London foreign exchange market.

### **16.2 Conversion of moneys received**

Axpo may convert any moneys received, recovered or realised in any currency under this Debenture (including the proceeds of any previous conversion under this Clause 16) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

## **17 Discharge of Security**

Upon Axpo becoming satisfied that the Security Period has ended (acting reasonably), unless any third party has any subrogation or other rights in respect of the Security created by this Debenture at that time, it:

- (a) shall confirm in writing to the Chargor that the Security Period has ended; and
- (b) shall or shall procure that its appointees will, at the request and cost of the Chargor:
  - (i) release the Security Assets from this Debenture; and
  - (ii) re-assign to the Chargor those Security Assets that have been assigned to Axpo under Clause 3 (*Creation of Security*).

Section 93 of the Act shall not apply to this Debenture.

## **18 Costs and expenses**

### **18.1 Transaction expenses**

Each party shall pay its own costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation, printing and execution of this Debenture.

### **18.2 Amendment costs**

If the Chargor requests an amendment, waiver, consent or release of or in relation to this Debenture, the Chargor shall, within three (3) Banking Days of demand, reimburse Axpo for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

### **18.3 Enforcement costs**

The Chargor shall, within three (3) Banking Days of demand, pay to Axpo or any Receiver the amount of all costs and expenses (including legal fees) incurred by Axpo or any Receiver in

connection with the enforcement of, or the preservation of any rights under, this Debenture or the investigation of any possible Enforcement Event.

## **19 Assignment**

Axpo may assign any of its rights under this Debenture to any person to whom it assigns or transfers any of its rights or obligations under the Wholesale Agreement.

## **20 Notices**

The provisions of Clause 20 (*Notices*) of the Wholesale Agreement shall apply to this Deed as if fully set out in this Deed, save that references to "this Agreement" shall be construed as references to this Deed.

## **21 Calculations and certificates**

### **21.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Debenture, the entries made in the accounts maintained by Axpo are *prima facie* evidence of the matters to which they relate.

### **21.2 Certificates and determinations**

Any certification or determination by Axpo of a rate or amount under this Debenture is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **22 Partial invalidity**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of Axpo, any right or remedy under this Debenture 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 Debenture are cumulative and not exclusive of any rights or remedies provided by law.

## **24 Amendments and waivers**

Any term of this Debenture may be amended or waived only with the written consent of the Chargor and Axpo.

## **25 Counterparts**

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

## **26 Governing law and enforcement**

### **26.1 Governing law**

English law governs this Debenture, its interpretation and any non-contractual obligations arising from or connected with it.

### **26.2 Jurisdiction**

- 26.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture) (a **Dispute**).
- 26.2.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 26.2.3 Notwithstanding Clause 26.2.1, Axpo shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Axpo may take concurrent proceedings in any number of jurisdictions.

**Executed** as a deed and delivered on the date appearing at the beginning of this Debenture.

## Schedule 1 – Forms of letter to and from Account Bank

### Part 1– Notice to Account Bank regarding [*specify Controlled Account(s)*]

To: [ *insert name and address of Lockbox Account Bank* ]

Date: \*\*

Dear Sirs

**Account number [*insert account number and sort code of the relevant Controlled Account(s)*][the Lockbox Account] [the Operating Account] (the Account[s])**

We refer to our above account with you, as it may from time to time be re-designated or re-numbered.

We give you notice that by a debenture dated \*\* between Axpo Solutions AG (**Axpo**) and us (the **Debenture**) we have assigned absolutely to Axpo all amounts standing to the credit of the Account[s] from time to time (the **Deposit[s]**) and all of our right, title and interest in, and relating to, the Account[s].

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter, we irrevocably authorise and instruct you:

- (a) to disclose to Axpo any information relating to us, the Account[s] and the Deposit[s] which Axpo may from time to time request you to disclose to it;
  - (b) in respect of:
    - (i) the Operating Account, following your receipt of notification from Axpo of an Enforcement Event, and
    - (ii) the Lockbox Account, at all times,
- to hold the Deposit[s] to the order of Axpo, and not permit the whole or any part of the Deposit[s] to be withdrawn by us without the prior written consent of Axpo;
- (c) at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture, to pay or release all or any part of the Deposit[s], and generally to act in relation to the Deposit[s], only in accordance with the written instructions of Axpo; and
  - (d) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Account[s] or the Deposit[s] which you may receive from Axpo.

The instructions and authorisations contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

Please acknowledge and confirm the above to Axpo in the form attached with a copy to us.

Yours faithfully,

.....

for and on behalf of \*\*                      *Chargor* ]

copy: Axpo Solutions AG

## Part 2 – Form of acknowledgement and confirmation from the Account Bank

To: [ insert name and address of Axpo ] (**Axpo**)

Attention: \*\*

Date: \*\*

Dear Sirs

**Account number \*\*** [insert account number and sort code of the relevant **Controlled Account[s]**] (the **Account[s]**)

We acknowledge receipt of a notice (the **Notice**) from SO Energy Trading Limited (the **Chargor**) dated \*\* that it has assigned absolutely to Axpo all amounts standing to the credit of the Account[s] from time to time (the **Deposit[s]**) and all of its right, title and interest in, and relating to, the Account[s] (the **Security**).

We confirm that:

- (a) the sum of £\*\* stands to the credit of the Account[s] as at the date of this letter;
- (b) we acknowledge receipt of the Notice and accept the authorisations and instructions contained in the Notice and we undertake to comply with its terms;
- (c) we have not received notice of:
  - (i) any other assignment of or encumbrance over [any/the] Deposit or [any/the] Account; or
  - (ii) any interest, claim or right in or to either of them by any third party,and we shall promptly give you notice of any such actual, potential or asserted assignment, encumbrance, interest, claim or right of which we become aware;
- (d) we do not, and will not, hold or otherwise have the benefit of any security interest or other encumbrance over the Account[s] or the Deposit[s]; and
- (e) we will not exercise any right of combination, consolidation, merger or set-off which we may have in respect of [an/the] Account or [a/the] Deposit.

We are aware that you are relying on this letter in connection with your rights under the Security.

This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of \*\* Account Bank ]

copy: [ *Chargor* ]

## Schedule 2 – Form of notice of assignment of Assigned Agreements

To:                   \*\*                   *insert name and address of other party to the Contract ]*

Attention:           \*\*

Date:               \*\*

Dear Sirs

### Notice of assignment of the [\*\*                    ]

We refer to the contract referred to above, as it may be amended, varied, novated, supplemented and replaced from time to time (the **Contract**).

We give you notice that by a debenture dated \*\*                    between Axpo Solutions AG (**Axpo**) and ourselves (the **Debenture**) we have assigned absolutely to Axpo all of our rights under and interest in the Contract, including all moneys which may become payable, and the benefit of all property and claims, under the Contract, and including any claim or action against you.

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter:

- (a) [at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture<sup>1</sup>,] we irrevocably authorise and instruct you to pay to Axpo all moneys which may become payable under the Contract and to comply with all instructions and requests you may receive from Axpo in relation to the Contract;
- (b) we ask you to inform Axpo in writing promptly if at any time:
  - (i) we fail duly and promptly to pay any moneys payable from time to time in respect of the Contract or otherwise breach the terms of the Contract; or
  - (ii) you become aware of any actual, potential or asserted assignment, encumbrance, interest, claim or right over or in respect of the Contract in favour of a third party;
- (c) we ask you:
  - (i) to give Axpo not less than 30 days' written notice of your terminating the Contract or allowing the Contract to lapse; and
  - (ii) to disclose to Axpo any information relating to the Contract which Axpo may from time to time request you to disclose to it.

The instructions and requests contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

<sup>1</sup> Wording to be deleted from a notice of assignment of a Customer Contract.



Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to Axpo at \*\* marked for the attention of \*\* .

Yours faithfully,

.....

for and on behalf of \*\* *Assignor* ]

copy: Axpo Solutions AG

### **Acknowledgement**

To: Axpo Solutions AG

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the Contract and that we will comply with the terms of that notice.

We confirm that no amendment, waiver or release of any of such rights, interests and benefits shall be effective without the prior written consent of Axpo.

For and on behalf of \*\*

By:

Dated:

## Schedule 3 – Form of notice of assignment of insurances

### Part 1 - Form of notice

To:                   \*\*                   *insert name and address of insurance company/society ]*

Attention:       \*\*

Date:             \*\*

Dear Sirs

#### Notice of assignment of the policy or policies referred to in the schedule to this letter

We refer to the policy or policies referred to above, as they may be amended, varied, novated, supplemented and replaced from time to time ([ the [ each a ] **Policy**).

We give you notice that by an assignment (the **Assignment**) dated \*\*                    between ourselves and Axpo Solutions AG (**Axpo**) we have assigned absolutely to Axpo [ the [ each ] Policy, and all of our rights under and interest in [ the ] each ] Policy, including all moneys and bonuses which are assured and which may become payable, and the benefit of all property and claims, under [ the [ each ] Policy, and including any claim or action against you.

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter:

- (a) we irrevocably authorise and instruct you:
  - (i) at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture, to pay to Axpo all moneys which are assured and which may become payable under [ the [ each ] Policy;
  - (ii) to note on [ the ] each ] Policy the interest of Axpo under the Assignment;
  - (iii) not, without the prior written consent of Axpo, to permit us to:
    - (A) amend, surrender or terminate [ any ][ the ] Policy;
    - (B) enter into any onerous obligation or restriction affecting [ any [ the ] Policy; or
    - (C) waive any of our rights under [ any ][ the ] Policy;
- (b) we ask you:
  - (i) to inform Axpo in writing promptly if at any time:
    - (A) we fail duly and promptly to pay any premiums or other moneys payable from time to time in respect of [ any ] the ] Policy or otherwise breach the terms of any Policy; or

- (B) you become aware of any actual, potential or asserted assignment, encumbrance, interest, claim or right over or in respect of [ any [ the ] Policy in favour of a third party;
- (ii) to give Axpo not less than 30 days' written notice of your terminating [ any [ the ] Policy or allowing [ any [ the ] Policy to lapse;
- (iii) to disclose to Axpo any information relating to [ the ] each ] Policy which Axpo may from time to time request you to disclose to it; and
- (iv) without reference to us, to comply with all instructions and requests you may receive from Axpo in relation to the Policy.

The instructions and requests contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

Please acknowledge and confirm to Axpo your agreement to the above in the form attached, with a copy to us.

Yours faithfully,

.....

for and on behalf of \*\* *Assignor* ]

copy: [ Axpo ]

## The Schedule

Assurance company / society	Policy Number	Date of Policy	Sum Assured (£)
**	**	**	**

## Part 2 - Form of acknowledgement and confirmation

To:                   \*\*                   *insert name and address of Axpo]*

Attention:       \*\*

Date:             \*\*

Dear Sirs

### Notice of assignment of [ policy ] policies ]

We acknowledge receipt of a notice (the **Notice**) from SO Energy Trading Limited (the **Assignor**) dated \*\* of the assignment by the Assignor to you of [ the [ each ] Policy (as defined in the Notice) and of certain rights under and interests in [ the [ each ] Policy.

We confirm that:

- (a) we have received the Notice and agree to comply with the instructions and requests contained in the Notice;
- (b) [ the ] each ] Policy is in full force and effect;
- (c) all premiums and other moneys payable in respect of [the] each ] Policy have been duly and promptly paid in full;
- (d) we have not received notice of any assignment, encumbrance, interest, claim or right, in favour of any third party, of, over or in respect of [ any ] the ] Policy or any rights under or interests in [ any [ the ] Policy; and
- (e) we do not hold or have, nor will we claim, assert, create or make, any encumbrance, interest, counterclaim, right of set-off or other right over or in respect of [any [ the ] Policy.

We are aware that you are relying on this letter in connection with your rights under the Assignment (as defined in the Notice).


This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of [ *insurance company/society* ]

copy: [ *Assignor* ]

Chargor

Executed as a deed by  )  
SO Energy Trading Limited acting by a )  
director in the presence of: )

Simon ASBOLT

Signature of witness:

Name of witness:

Address

  
LAURENCE HEATH

Axpo

Executed as a deed by )  
Axpo Solutions AG acting by )  
\_\_\_\_\_ and )  
\_\_\_\_\_ )  
being persons who )  
in accordance with the law of )  
Switzerland are acting under the )  
authority of Axpo Solutions AG )  
in the presence of: )

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

**EXECUTION VERSION**

## **Debenture**

**Dated 20 December 2019**

**SO Energy Trading Limited**  
(the Chargor)

**Axpo Solutions AG**  
(Axpo)

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# Debenture

**Dated** 20 **December 2019**

## **Between**

- (1) **SO Energy Trading Limited**, a company registered in England with number 09263295 whose registered office is at 107 Power Road, London, England, W4 5PY (the **Chargor**); and
- (2) **Axpo Solutions AG**, a company registered in Switzerland with company number CHE - 105.779.348, whose registered office is at Parkstrasse 23, CH-5401, Baden, Switzerland (**Axpo**).

## **Recitals**

- A Axpo has agreed to enter into certain transactions with the Chargor pursuant to, and subject to the terms of, the Transaction Documents.
- B It is a condition precedent to the effectiveness of the Wholesale Agreement that this Debenture is entered into.
- C The Chargor has agreed to provide Security to Axpo to secure the payment and discharge of the Secured Liabilities.

## **1 Definitions and construction**

### **1.1 Definitions**

Words and expressions defined in the Wholesale Agreement shall have the same meanings in this Debenture unless they are expressly defined in it and, in addition, in this Debenture:

**Act** means the Law of Property Act 1925.

**Account Bank** means any bank at which a Controlled Account is held.

**Approved Person means:**

- (a) any of BDO, Deloitte, Ernst & Young, Grant Thornton, KPMG or PricewaterhouseCoopers; or
- (b) if none of the persons specified in paragraph (a) above accepts a mandate to act as administrator or Receiver under this Debenture within five (5) Banking Days of an offer to so act, then such other person as is (in the opinion of Axpo acting reasonably) suitably qualified for that role.

**Assigned Agreements** means:

- (a) the Customer Contracts; and
- (b) any other agreement or document to which the Chargor is a party that is designated as an Assigned Agreement by Axpo and the Chargor,

in each case, as amended, varied, novated, supplemented and replaced from time to time.



**Assigned Agreement Rights** means:

- (a) all claims and all moneys which might at any time be or become paid or payable to or for the account of the Chargor under or in respect of any Assigned Agreement, including all claims for damages and the proceeds of all claims, awards, decisions and judgments at any time received or receivable by the Chargor and any return of any sums which might at any time be or become paid or payable to the Chargor;
- (b) all rights and remedies of the Chargor under or in respect of any Assigned Agreement, whether expressly provided in such Assigned Agreement or otherwise, including the right to compel performance of any Assigned Agreement; and
- (c) all guarantees, indemnities, mortgages, securities, assignments, charges and other security of whatever nature now or in the future held by the Chargor in respect of any Assigned Agreement, including all moneys which might at any time be or become paid or payable to or for the account of the Chargor under them and all rights and remedies for enforcing the same or compelling performance of them.

**Authorisation** means any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**Controlled Account** means:

- (a) the Lockbox Account;
- (b) the Operating Account; and
- (c) any other bank account designated as an Controlled Account by Axpo and the Chargor.

**Default Rate** means the Interest Rate as defined in the NBP Agreement.

**Delegate** means any delegate, agent, attorney or trustee appointed by Axpo.

**Derivative Contract** means any master agreement, schedule, transaction, confirmation, novation or other instrument (other than a Trading Document) entered into by the Chargor and a counterparty from time to time in connection with protection against or benefit from fluctuation in any rate or price.

**Enforcement Event** means:

- (a) the occurrence of an Event of Default with respect to the Chargor;
- (b) a failure by the Chargor to pay, on the due date, any amount payable by it under the Wholesale Agreement on or after the expiry or termination of, or on or after the service of a termination notice under, the Wholesale Agreement; or
- (c) a failure by the Chargor to pay, on the due date, any amount payable by it under a Transaction Document on or after the occurrence of a Close-Out Event (as defined in the Master Netting Agreement).

**Equipment** means all fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment and the benefit of all related Authorisations, agreements and warranties.

**Intellectual Property** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Affiliate (which may now or in the future subsist).

**Investments** means:

- (a) all or any stocks, shares, bonds and securities of any kind (marketable or otherwise), negotiable instruments and warrants and any other financial instruments (as defined in the Regulations); and
- (b) all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise which at any time accrue to or are offered or arise in respect of them,

and includes all dividends, interest and other distributions paid or payable on or in respect of them.

**Land** has the same meaning as it has in section 205(1) of the Act.

**Receiver** means a receiver appointed pursuant to this Debenture or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if Axpo is permitted by law to appoint an administrative receiver, includes an administrative receiver.

**Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements, and **Regulation** means any of them.

**Secured Liabilities** means the liabilities of the Chargor to Axpo under or pursuant to the Transaction Documents.

**Security** means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

**Security Assets** means all of the assets of the Chargor which are the subject of any Security created or to be created by this Debenture.

**Security Period** means the period starting on the date of this Debenture and ending on the date on:

- (a) either:
  - (i) all of the Secured Liabilities have been fully and finally discharged; or
  - (ii) following the expiry of any CSA Notice Period, the Chargor has provided and/or replaced Eligible Credit Support (such term as defined in the Credit

Support Annex) to Axpo in accordance with the terms of the Credit Support Annex; and

- (b) it is under no commitment, obligation or liability (actual or contingent) to provide any financial accommodation to, or to enter into any Transactions with, the Chargor pursuant to the Transaction Documents.

**Trading Receivables** means any:

- (a) Final Net Settlement Amount (as defined in the Master Netting Agreement);
- (b) Termination Amount (as defined in the GTMA);
- (c) Termination Amount (as defined in the NBP Agreement); and/or
- (d) equivalent amount or payment (howsoever described) under any other Trading Document,

owed to the Chargor.

**Wholesale Agreement** means the wholesale agreement dated on or around the date of this Debenture between the Chargor and Axpo.

## 1.2 Construction

- 1.2.1 The principles of construction set out in clause 1.2 (*Interpretation*) of the Wholesale Agreement apply to this Debenture, insofar as they are relevant to it and subject to any necessary changes, as they apply to the Wholesale Agreement.
- 1.2.2 Unless a contrary intention appears, any reference in this Debenture to:
  - (a) this **Debenture** is a reference to this Debenture as amended, varied, novated, supplemented and replaced from time to time;
  - (b) the **Chargor**, **Axpo** or a **Receiver** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted); and
  - (c) **Axpo** or a **Receiver** (except for the references in Clause 15 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

## 1.3 Third party rights

- 1.3.1 Unless expressly provided to the contrary in this Debenture, a person who is not a party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Debenture.
- 1.3.2 The parties to this Debenture may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Debenture without the consent of any person that is not a party (without prejudice to the terms of the other Transaction Documents).

- 1.3.3 Any person described in Clauses 10 (*Protection of purchasers*) or Clause 11 (*Protection of Axpo and Receivers*) may, subject to this Clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Debenture which expressly confers rights on it.

#### **1.4 Effect as a deed**

This Debenture shall take effect as a deed even if it is signed under hand on behalf of Axpo.

#### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

The terms of the other Transaction Documents and of any side letters between any parties in relation to any Transaction Document are incorporated in this Debenture to the extent required to ensure that any purported disposition of an interest in Land contained in this Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **2 Covenant to pay**

The Chargor covenants with Axpo that it will on demand pay and discharge the Secured Liabilities when due.

### **3 Creation of Security**

#### **3.1 Land**

The Chargor charges by way of fixed charge any right, title or interest which it has now or may subsequently acquire to or in any other Land.

#### **3.2 Investments**

The Chargor mortgages or (if or to the extent that this Debenture does not take effect as a mortgage) charges by way of fixed charge all its Investments, including those held for it by any nominee.

#### **3.3 Equipment**

The Chargor charges by way of fixed charge all its Equipment in so far as it is not charged by way of legal mortgage under Clause 3.1 (*Land*).

#### **3.4 Controlled Account**

- 3.4.1 The Chargor assigns absolutely all amounts standing to the credit of each Controlled Account and all of its right, title and interest in and relating to each Controlled Account.

#### **3.5 Intellectual Property**

The Chargor charges by way of fixed charge all its Intellectual Property.

#### **3.6 Goodwill**

The Chargor charges by way of fixed charge its goodwill.

### **3.7 Uncalled capital**

The Chargor charges by way of fixed charge its uncalled capital.

### **3.8 Authorisations**

The Chargor charges by way of fixed charge the benefit of all Authorisations it holds in relation to any Security Asset.

### **3.9 Derivative Contracts**

The Chargor charges by way of fixed charge its right to receive all moneys payable under any Derivative Contract.

### **3.10 Trading Receivables**

The Chargor charges by way of fixed charge its right to receive all Trading Receivables.

### **3.11 Assigned Agreements**

The Chargor assigns absolutely all its rights and interests under:

- (a) the Assigned Agreements; and
- (b) the Assigned Agreement Rights.

### **3.12 Insurances**

The Chargor assigns absolutely all its rights and interests under all contracts and policies of insurance.

### **3.13 Contractual rights**

The Chargor assigns absolutely all rights under all deeds and agreements to which it is a party and which are not mortgaged, charged by way of fixed charge or assigned under any of Clauses 3.1 (*Land*) to 3.12 (*Insurances*) (inclusive), other than the Transaction Documents and any Derivative Contract.

### **3.14 Other assets**

- 3.14.1 The Chargor charges by way of floating charge all its present and future business, undertaking and assets which are not effectively mortgaged, charged by way of fixed charge or assigned under this Clause 3.
- 3.14.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Debenture.

### **3.15 Trust**

If or to the extent that the assignment or charging of any Security Asset is ineffective because of a prohibition on that assignment or charging, the Chargor holds it on trust for Axpo.

## **4 Nature of Security created**

### **4.1 General**

The Security created under this Debenture is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) (except in the case of assets which are the subject of a legal mortgage under this Debenture) over all present and future assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- (c) in favour of Axpo; and
- (d) with full title guarantee.

### **4.2 Security over Derivative Contracts**

The Security created under this Debenture over any Derivative Contract shall apply net of set-off or combination of accounts owed under, and in accordance with the terms of, that Derivative Contract.

## **5 Conversion of floating charge**

### **5.1 Conversion on notice**

Subject to Clause 5.2 (*Limitation*), Axpo may by notice to the Chargor at any time during the Security Period convert the floating charge created by this Debenture into a fixed charge in respect of any Security Asset specified in that notice if:

- (a) an Enforcement Event is continuing; or
- (b) Axpo considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy (including as a result of the appointment by Ofgem of a supplier of last resort in relation to any of the Customers).

### **5.2 Limitation**

Clause 5.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

### **5.3 Automatic conversion**

The floating charge created by this Debenture will convert automatically into fixed charges:

- (a) if Axpo receives notice of an intention to appoint an administrator of the Chargor;
- (b) if any steps are taken, (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional

liquidator, administrator or Receiver in respect of the Chargor over all or any part of its assets, or if such person is appointed;

- (c) if the Chargor creates or attempts to create Security over all or any of the Security Assets;
- (d) on the crystallisation of any other floating charge over the Security Assets;
- (e) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- (f) in any other circumstances prescribed by law.

## **6 Positive covenants**

The covenants in this Clause 6 remain in force from the date of this Debenture until the expiry of the Security Period.

### **6.1 Land**

6.1.1 The Chargor must, within fourteen (14) days after receipt by it of any material application, requirement, order or notice served or given by any public or local or any other authority with respect to its Land (or any part of it):

- (a) deliver a copy to Axpo; and
- (b) if requested by Axpo, inform Axpo of the steps taken or proposed to be taken to comply with the relevant requirements.

6.1.2 The Chargor shall promptly notify Axpo in writing if the Chargor:

- (a) intends to acquire any estate or interest in Land; or
- (b) acquires any estate or interest in Land,

in each case giving such details as Axpo may require including all facilities within the power of the Chargor to enable Axpo or its lawyers (at the expense of the Chargor to the extent such expenses are reasonably and properly incurred) to:

- (a) carry out investigations of title to the Land;
- (b) make such enquiries in relation to any part of the Land as a prudent mortgagee might carry out; and
- (c) if required by Axpo, provide it with a report on title of the Chargor to the Land concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of that nature.

6.1.3 If the Chargor acquires any freehold or leasehold property after the date of this Debenture it shall:

- (a) promptly on request by Axpo and at the cost of the Chargor, execute and deliver to Axpo a legal mortgage in favour of Axpo of that property in any form which Axpo may

require (acting reasonably) and submit relevant applications, do relevant searches and issue such notices as is necessary to perfect the Axpo's interest under the legal mortgage; and

- (b) if applicable, ensure that the provisions of Clause 14.2 (*Application to Land Registrar*) are complied with in relation to that legal mortgage.

## **6.2 Preservation of the Security Assets**

The Chargor shall:

- (a) keep all Land, all Equipment and all other tangible assets which form part of the Security Assets in the same or better condition as that in which it is on the date of this Debenture and permit Axpo free access at all reasonable times and on reasonable notice to view their state and condition;
- (b) preserve, maintain and renew as and when necessary all Intellectual Property which forms part of the Security Assets;
- (c) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or its use or enjoyment;
- (d) pay all tax, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, Axpo may pay it);
- (e) notify Axpo of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened; and
- (f) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

## **6.3 Notice to Assignment of Controlled Accounts**

6.3.1 After executing this Debenture, the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to the Account Bank in relation to the Lockbox Account and the Operating Account in the form set out in Part 1 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*);
- (b) use reasonable endeavours to procure that the Account Bank promptly acknowledges that notice in the form set out in Part 2 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*), or in any other form agreed by Axpo.

6.3.2 After opening any Controlled Account (other than the Lockbox Account and the Operating Account), the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to the relevant account bank in relation to that Controlled Account and in



the form set out in Part 1 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*);

- (b) use reasonable endeavours to procure that the relevant account bank promptly acknowledges that notice in the form set out in Part 2 of Schedule 1 (*Forms of letter to and from Lockbox Account Bank*), or in any other form agreed by Axpo.

#### **6.4 Notice of Assignment of insurances**

After executing this Debenture (and following the taking out of any insurance after the date of this Debenture), the Chargor shall:

- (a) promptly (and in any event within five (5) Banking Days of the date of this Debenture) give notice to insurers in respect of the insurances substantially in the form set out in Part 1 of Schedule 4 (*form of notice of assignment of insurances*); and
- (b) use reasonable endeavours to procure that each party served with a notice under Clause 6.4(a) promptly acknowledges that notice in substantially the form set out in Part 2 of Schedule 4 (*form of notice of assignment of insurances*) or in any other form agreed by Axpo.

#### **6.5 Notice of Assignment of Customer Contracts**

The Chargor shall:

- (a) upon notice by Axpo following an Enforcement Event that is continuing, and upon request by Axpo to do so, give notice to the other parties to the Customer Contracts in the form set out in Schedule 2 (*Form of notice of assignment of Assigned Agreements*) and deliver to Axpo a copy of each notice;
- (b) use all reasonable endeavours to procure that each person served with a notice under paragraph (a) above countersigns such notice and returns it to Axpo within 10 Banking Days of the notice having been sent.

#### **6.6 Notice of Assignment of Assigned Agreements (other than Customer Contracts)**

After executing this Debenture (and following the execution of any Assigned Agreement, other than a Customer Contract, after the date of this Debenture), the Chargor shall:

- (a) give notice to the other parties to each Assigned Agreement (other than a Customer Contract) in the form set out in Schedule 2 (*Form of Notice of Assignment*) and deliver to Axpo a copy of each notice;
- (b) use all reasonable endeavours to procure that each person served with a notice under paragraph 6.5(a) above countersigns such notice and returns it to Axpo within 10 Banking Days of the notice having been sent.

#### **6.7 Payments without deduction**

The Chargor covenants with Axpo that all payments to be made by it under this Debenture shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## **7 Negative covenants**

The covenants in this Clause 7 remain in force from the date of this Debenture until the expiry of the Security Period, and are without prejudice to any similar covenants agreed between the parties in the Wholesale Agreement.

### **7.1 Disposals**

Except as permitted in the Wholesale Agreement, or as otherwise agreed to in writing by Axpo, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan, or otherwise dispose of any Security Asset, or enter into an agreement to make any such disposal.

### **7.2 Negative pledge**

Except as permitted in the Wholesale Agreement, or as otherwise agreed to in writing by Axpo, the Chargor shall not create or permit to subsist any Security over any Security Asset.

### **7.3 Further Preservation of the Security Assets**

The Chargor shall not without the written consent of Axpo:

- (a) enter into any onerous obligation or restriction affecting any Security Asset;
- (b) (acting reasonably) in relation to any Land forming part of the Security Assets:
  - (i) part with possession of it, confer on any other person any right or licence to occupy it or grant any licence to assign, sub-let or create any Security over it;
  - (ii) exercise any of the powers conferred by sections 99 and 100 of the Act of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases;
  - (iii) vary, assign or otherwise dispose of or allow to be forfeited any leasehold interest;
  - (iv) agree any rent review;
  - (v) make any structural or material alteration, or do or allow anything to be done which falls within the definition of development in section 55 of the Town and Country Planning Act 1990;
  - (vi) allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor, or create or permit to arise any interest which overrides under the Land Registration Act 2002 (and the Chargor shall reimburse Axpo for its reasonable costs of lodging:
    - (A) a caution against first registration of the title to that Land; or
    - (B) if that Land is unregistered, a land charge); or
  - (vii) make an application, consent to or acquiesce in the application by any third party, to the Land Registry to enter any matter on the register of title;

- (c) in relation to the Investments:
  - (i) permit any person other than the Chargor, Axpo or its nominee or any purchaser to be registered as holder of any of the Investments; or
  - (ii) permit a variation of any rights attaching to any of those Investments;
- (d) in relation to any uncalled capital of the Chargor, call it up or receive it in advance of calls unless Axpo otherwise directs, nor apply it, when paid, otherwise than in payment of the Secured Liabilities or as Axpo otherwise directs; or
- (e) take any Security in connection with its liabilities under this Debenture from any guarantor of, or provider of Security for, any of the Secured Liabilities.

## **8 Enforcement**

### **8.1 When Security becomes enforceable**

The Security created by this Debenture shall become enforceable on the occurrence of an Enforcement Event.

### **8.2 Powers on enforcement**

8.2.1 At any time after the Security created by this Debenture has become enforceable Axpo may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) sell or otherwise dispose of the Security Assets, and otherwise exercise all the other powers and rights conferred on mortgagees by the Act, as varied and extended by this Debenture, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act;
- (c) to the extent that any Security Asset constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to Axpo insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18;
- (d) subject to Clause 9.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets; and
- (e) appoint an administrator of the Chargor.

8.2.2 The value of any Financial Collateral appropriated pursuant to paragraph (c) of Clause 8.2.1 shall be:

- (a) in the case of cash, its face value at the time of appropriation; and
- (b) in the case of financial instruments or other Financial Collateral, their market price at the time of appropriation as determined by Axpo (or an agent, Delegate, attorney or Receiver appointed by it) by reference to a public index or by such other process as Axpo (or an agent, Delegate, attorney or Receiver appointed by it) may select, including independent valuation.

In each case, the parties agree that the method of valuation provided for in this Debenture shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

- 8.2.3 Axpo agrees that any person it appoints pursuant to paragraph (d) or (e) of Clause 8.2.1 shall be an Approved Person.

### **8.3 Disposal of the Security Assets**

In exercising the powers referred to in paragraph (a) of Clause 8.2 (*Powers on enforcement*), Axpo or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### **8.4 Application of moneys**

- 8.4.1 Any moneys received or recovered by Axpo or a Receiver pursuant to this Debenture after the Security created by it has become enforceable shall, to the extent permitted by law, be applied in the following order of priority:

- (a) in or towards the pro rata payment or provision for:
    - (i) all costs and expenses incurred by Axpo under or in connection with this Debenture; and
    - (ii) all sums owing to a Receiver;
  - (b) in or towards the discharge of the Secured Liabilities in any order chosen by Axpo; and
  - (c) then, in the payment of any surplus to the Chargor or other person entitled to it,
- and section 109(8) of the Act shall not apply.

- 8.4.2 Clause 8.4.1 will override any appropriation made by the Chargor.

### **8.5 Set-off**

Axpo may, at any time after the occurrence of an Enforcement Event, set-off any Trading Receivables against all or any of the Secured Liabilities that are then due and payable.

## **9 Appointment and powers of Receivers**

### **9.1 Method of appointment and removal**

- 9.1.1 Axpo may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.
- 9.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by Axpo pursuant to this Debenture may be made in writing under the hand of any officer or manager of Axpo (subject to any requirement for a court order in the removal of an administrative receiver).

## **9.2 Powers of Receiver**

Every Receiver shall have all the powers:

- (a) of Axpo under this Debenture;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Security Assets or any of them (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its only absolute owner.

## **9.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Debenture.

## **9.4 Receiver as agent**

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

## **9.5 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and Axpo, and the maximum rate specified in section 109(6) of the Act shall not apply.

## **10 Protection of purchasers**

No purchaser or other person dealing with Axpo or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of Axpo or any Receiver to exercise any of the powers conferred by this Debenture has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to Axpo, to any Receiver or to any other person.

## **11 Protection of Axpo and Receivers**

### **11.1 Exclusion of liability**

None of Axpo, any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 16 (*Currency*); or
- (d) for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Chargor); or
- (e) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

## **11.2 General indemnity**

11.2.1 The Chargor shall indemnify Axpo, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to all or any of the Security Assets;
- (b) any payment relating to or in respect of all or any of the Security Assets which becomes payable at any time by any of them;
- (c) any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Debenture;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Debenture; and
- (e) any breach by the Chargor of any of its covenants or other obligations to Axpo,

except in the case of gross negligence or wilful misconduct on the part of that person.

11.2.2 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

## **11.3 Indemnity out of the Security Assets**

Axpo, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.2 (*General indemnity*).

## **12 Preservation of Security**

### **12.1 Reinstatement**

If any payment by the Chargor or discharge given by Axpo (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liabilities of the Chargor and the Security created by this Debenture shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) Axpo shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

### **12.2 Waiver of defences**

Neither the Security created by this Debenture nor the obligations of the Chargor under this Debenture will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor or Axpo) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Transaction Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Transaction Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

### **12.3 Chargor intent**

Without prejudice to the generality of Clause 12.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Debenture shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;

- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

#### **12.4 Immediate recourse**

The Chargor waives any right it may have of first requiring Axpo (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Debenture. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

#### **12.5 Appropriations**

During the Security Period Axpo may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.4 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Liabilities.

#### **12.6 Deferral of Chargor's rights**

During the Security Period and unless Axpo otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Debenture or the enforcement of the Security created by this Debenture:

- (a) to receive or claim payment from, or be indemnified by the Parent;
- (b) to claim any contribution from or exercise any right of set-off against, any guarantor of, or indemnifier or provider of Security in respect of the Chargor's obligations under the Transaction Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of Axpo under any Transaction Document or of any guarantee or Security taken pursuant to, or in connection with, the Transaction Documents by Axpo;



- (d) to exercise any right of set-off against the Parent; and/or
- (e) to claim or prove as a creditor of the Parent in competition with Axpo.

## **12.7 Additional Security**

This Debenture is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to Axpo.

## **12.8 New accounts**

If Axpo receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by or on behalf of the Chargor to Axpo:

- (a) shall be credited or be treated as having been credited to the new account of the Chargor; and
- (b) shall not operate to reduce the Secured Liabilities at the time when Axpo received or was deemed to have received such notice.

## **13 Tacking**

For the purposes of section 94(1) of the Act and section 49(3) of the Land Registration Act 2002 Axpo confirms that it shall make further advances or enter into further Transactions on the terms and subject to the conditions of the Transaction Documents.

## **14 Further assurance**

### **14.1 Registration at Companies House**

The Chargor consents to the registration of this Debenture at Companies House pursuant to Part 25 of the Companies Act 2006.

### **14.2 Application to Land Registrar**

The Chargor consents to the registration against the registered title of any freehold or leasehold property that it acquires of:

- (a) a restriction in the following terms:

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated \*\* date of Debenture ] in favour of Axpo Solutions AG referred to in the charges register or their conveyancer. (Form P)"; and
- (b) a notice that Axpo is under an obligation to make further advances on the terms and subject to the conditions of the Transaction Documents.

### **14.3 Further action**

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which Axpo may require in order to:

- (a) give effect to the requirements of this Debenture;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Debenture;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Debenture with any other Security over any assets of the Chargor; or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on Axpo, any Receiver or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

### **14.4 Deposit of documents**

The Chargor covenants that, on the date of this Debenture and at all times during the Security Period as soon as it receives them (and in any event as soon as Axpo so requests), it shall deposit with Axpo, in respect of or in connection with the Security Assets:

- (a) all deeds, stocks, share certificates, certificates and other documents of or evidencing title;
- (b) signed undated transfers of the Investments, completed in blank; and
- (c) any other documents which Axpo may from time to time require for perfecting its title, or the title of any purchaser,

all of which will be held by Axpo at the risk and expense of the Chargor.

### **14.5 Law of Property (Miscellaneous Provisions) Act 1994**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 14.

## **15 Power of attorney**

The Chargor irrevocably and by way of security appoints each of:

- (a) Axpo;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of Axpo; and
- (c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of an Enforcement Event or following the failure by the Chargor to comply with a

request from Axpo, to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Debenture. The Chargor agrees, promptly on the request of Axpo or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

## **16 Currency**

### **16.1 The Spot Rate**

In this Clause 16, the **Spot Rate** means the spot rate of exchange of Lloyds Bank plc for the purchase of any currency with any other currency in the London foreign exchange market.

### **16.2 Conversion of moneys received**

Axpo may convert any moneys received, recovered or realised in any currency under this Debenture (including the proceeds of any previous conversion under this Clause 16) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

## **17 Discharge of Security**

Upon Axpo becoming satisfied that the Security Period has ended (acting reasonably), unless any third party has any subrogation or other rights in respect of the Security created by this Debenture at that time, it:

- (a) shall confirm in writing to the Chargor that the Security Period has ended; and
- (b) shall or shall procure that its appointees will, at the request and cost of the Chargor:
  - (i) release the Security Assets from this Debenture; and
  - (ii) re-assign to the Chargor those Security Assets that have been assigned to Axpo under Clause 3 (*Creation of Security*).

Section 93 of the Act shall not apply to this Debenture.

## **18 Costs and expenses**

### **18.1 Transaction expenses**

Each party shall pay its own costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation, printing and execution of this Debenture.

### **18.2 Amendment costs**

If the Chargor requests an amendment, waiver, consent or release of or in relation to this Debenture, the Chargor shall, within three (3) Banking Days of demand, reimburse Axpo for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

### **18.3 Enforcement costs**

The Chargor shall, within three (3) Banking Days of demand, pay to Axpo or any Receiver the amount of all costs and expenses (including legal fees) incurred by Axpo or any Receiver in

connection with the enforcement of, or the preservation of any rights under, this Debenture or the investigation of any possible Enforcement Event.

## **19 Assignment**

Axpo may assign any of its rights under this Debenture to any person to whom it assigns or transfers any of its rights or obligations under the Wholesale Agreement.

## **20 Notices**

The provisions of Clause 20 (*Notices*) of the Wholesale Agreement shall apply to this Deed as if fully set out in this Deed, save that references to "this Agreement" shall be construed as references to this Deed.

## **21 Calculations and certificates**

### **21.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Debenture, the entries made in the accounts maintained by Axpo are *prima facie* evidence of the matters to which they relate.

### **21.2 Certificates and determinations**

Any certification or determination by Axpo of a rate or amount under this Debenture is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **22 Partial invalidity**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of Axpo, any right or remedy under this Debenture 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 Debenture are cumulative and not exclusive of any rights or remedies provided by law.

## **24 Amendments and waivers**

Any term of this Debenture may be amended or waived only with the written consent of the Chargor and Axpo.

## **25 Counterparts**

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

## **26 Governing law and enforcement**

### **26.1 Governing law**

English law governs this Debenture, its interpretation and any non-contractual obligations arising from or connected with it.

### **26.2 Jurisdiction**

- 26.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture) (a **Dispute**).
- 26.2.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 26.2.3 Notwithstanding Clause 26.2.1, Axpo shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Axpo may take concurrent proceedings in any number of jurisdictions.

**Executed** as a deed and delivered on the date appearing at the beginning of this Debenture.

## Schedule 1 – Forms of letter to and from Account Bank

### Part 1– Notice to Account Bank regarding [*specify Controlled Account(s)*]

To: [ *insert name and address of Lockbox Account Bank* ]

Date: \*\*

Dear Sirs

**Account number [*insert account number and sort code of the relevant Controlled Account(s)*][the Lockbox Account] [the Operating Account] (the Account[s])**

We refer to our above account with you, as it may from time to time be re-designated or re-numbered.

We give you notice that by a debenture dated \*\* between Axpo Solutions AG (**Axpo**) and us (the **Debenture**) we have assigned absolutely to Axpo all amounts standing to the credit of the Account[s] from time to time (the **Deposit[s]**) and all of our right, title and interest in, and relating to, the Account[s].

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter, we irrevocably authorise and instruct you:

- (a) to disclose to Axpo any information relating to us, the Account[s] and the Deposit[s] which Axpo may from time to time request you to disclose to it;
  - (b) in respect of:
    - (i) the Operating Account, following your receipt of notification from Axpo of an Enforcement Event, and
    - (ii) the Lockbox Account, at all times,
- to hold the Deposit[s] to the order of Axpo, and not permit the whole or any part of the Deposit[s] to be withdrawn by us without the prior written consent of Axpo;
- (c) at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture, to pay or release all or any part of the Deposit[s], and generally to act in relation to the Deposit[s], only in accordance with the written instructions of Axpo; and
  - (d) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Account[s] or the Deposit[s] which you may receive from Axpo.

The instructions and authorisations contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

Please acknowledge and confirm the above to Axpo in the form attached with a copy to us.

Yours faithfully,

.....

for and on behalf of \*\*                      *Chargor* ]

copy: Axpo Solutions AG

## Part 2 – Form of acknowledgement and confirmation from the Account Bank

To: [ insert name and address of Axpo ] (**Axpo**)

Attention: \*\*

Date: \*\*

Dear Sirs

**Account number \*\*** [insert account number and sort code of the relevant **Controlled Account[s]**] (the **Account[s]**)

We acknowledge receipt of a notice (the **Notice**) from SO Energy Trading Limited (the **Chargor**) dated \*\* that it has assigned absolutely to Axpo all amounts standing to the credit of the Account[s] from time to time (the **Deposit[s]**) and all of its right, title and interest in, and relating to, the Account[s] (the **Security**).

We confirm that:

- (a) the sum of £\*\* stands to the credit of the Account[s] as at the date of this letter;
- (b) we acknowledge receipt of the Notice and accept the authorisations and instructions contained in the Notice and we undertake to comply with its terms;
- (c) we have not received notice of:
  - (i) any other assignment of or encumbrance over [any/the] Deposit or [any/the] Account; or
  - (ii) any interest, claim or right in or to either of them by any third party,and we shall promptly give you notice of any such actual, potential or asserted assignment, encumbrance, interest, claim or right of which we become aware;
- (d) we do not, and will not, hold or otherwise have the benefit of any security interest or other encumbrance over the Account[s] or the Deposit[s]; and
- (e) we will not exercise any right of combination, consolidation, merger or set-off which we may have in respect of [an/the] Account or [a/the] Deposit.

We are aware that you are relying on this letter in connection with your rights under the Security.

This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of \*\* Account Bank ]



copy: [ *Chargor* ]

## Schedule 2 – Form of notice of assignment of Assigned Agreements

To:                   \*\*                   *insert name and address of other party to the Contract ]*

Attention:           \*\*

Date:               \*\*

Dear Sirs

### Notice of assignment of the [\*\*                    ]

We refer to the contract referred to above, as it may be amended, varied, novated, supplemented and replaced from time to time (the **Contract**).

We give you notice that by a debenture dated \*\*                    between Axpo Solutions AG (**Axpo**) and ourselves (the **Debenture**) we have assigned absolutely to Axpo all of our rights under and interest in the Contract, including all moneys which may become payable, and the benefit of all property and claims, under the Contract, and including any claim or action against you.

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter:

- (a) [at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture<sup>1</sup>,] we irrevocably authorise and instruct you to pay to Axpo all moneys which may become payable under the Contract and to comply with all instructions and requests you may receive from Axpo in relation to the Contract;
- (b) we ask you to inform Axpo in writing promptly if at any time:
  - (i) we fail duly and promptly to pay any moneys payable from time to time in respect of the Contract or otherwise breach the terms of the Contract; or
  - (ii) you become aware of any actual, potential or asserted assignment, encumbrance, interest, claim or right over or in respect of the Contract in favour of a third party;
- (c) we ask you:
  - (i) to give Axpo not less than 30 days' written notice of your terminating the Contract or allowing the Contract to lapse; and
  - (ii) to disclose to Axpo any information relating to the Contract which Axpo may from time to time request you to disclose to it.

The instructions and requests contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

<sup>1</sup> Wording to be deleted from a notice of assignment of a Customer Contract.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to Axpo at \*\* marked for the attention of \*\* .

Yours faithfully,

.....

for and on behalf of \*\* *Assignor* ]

copy: Axpo Solutions AG

### **Acknowledgement**

To: Axpo Solutions AG

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the Contract and that we will comply with the terms of that notice.

We confirm that no amendment, waiver or release of any of such rights, interests and benefits shall be effective without the prior written consent of Axpo.

For and on behalf of \*\*

By:

Dated:

## Schedule 3 – Form of notice of assignment of insurances

### Part 1 - Form of notice

To:                   \*\*                   *insert name and address of insurance company/society ]*

Attention:       \*\*

Date:             \*\*

Dear Sirs

#### Notice of assignment of the policy or policies referred to in the schedule to this letter

We refer to the policy or policies referred to above, as they may be amended, varied, novated, supplemented and replaced from time to time ([ the [ each a ] **Policy**).

We give you notice that by an assignment (the **Assignment**) dated \*\*                    between ourselves and Axpo Solutions AG (**Axpo**) we have assigned absolutely to Axpo [ the [ each ] Policy, and all of our rights under and interest in [ the ] each ] Policy, including all moneys and bonuses which are assured and which may become payable, and the benefit of all property and claims, under [ the [ each ] Policy, and including any claim or action against you.

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter:

- (a) we irrevocably authorise and instruct you:
  - (i) at any time after you receive notice from Axpo that security has become enforceable in accordance with the terms of the Debenture, to pay to Axpo all moneys which are assured and which may become payable under [ the [ each ] Policy;
  - (ii) to note on [ the ] each ] Policy the interest of Axpo under the Assignment;
  - (iii) not, without the prior written consent of Axpo, to permit us to:
    - (A) amend, surrender or terminate [ any ][ the ] Policy;
    - (B) enter into any onerous obligation or restriction affecting [ any [ the ] Policy; or
    - (C) waive any of our rights under [ any ][ the ] Policy;
- (b) we ask you:
  - (i) to inform Axpo in writing promptly if at any time:
    - (A) we fail duly and promptly to pay any premiums or other moneys payable from time to time in respect of [ any ] the ] Policy or otherwise breach the terms of any Policy; or

- (B) you become aware of any actual, potential or asserted assignment, encumbrance, interest, claim or right over or in respect of [ any [ the ] Policy in favour of a third party;
- (ii) to give Axpo not less than 30 days' written notice of your terminating [ any [ the ] Policy or allowing [ any [ the ] Policy to lapse;
- (iii) to disclose to Axpo any information relating to [ the ] each ] Policy which Axpo may from time to time request you to disclose to it; and
- (iv) without reference to us, to comply with all instructions and requests you may receive from Axpo in relation to the Policy.

The instructions and requests contained in this letter may not be revoked or varied without the written agreement of Axpo.

This letter is governed by English law.

Please acknowledge and confirm to Axpo your agreement to the above in the form attached, with a copy to us.

Yours faithfully,

.....

for and on behalf of \*\* *Assignor* ]

copy: [ Axpo ]

## The Schedule

Assurance company / society	Policy Number	Date of Policy	Sum Assured (£)
**	**	**	**

## Part 2 - Form of acknowledgement and confirmation

To:                   \*\*                   *insert name and address of Axpo]*

Attention:       \*\*

Date:             \*\*

Dear Sirs

### Notice of assignment of [ policy ] policies ]

We acknowledge receipt of a notice (the **Notice**) from SO Energy Trading Limited (the **Assignor**) dated \*\* of the assignment by the Assignor to you of [ the [ each ] Policy (as defined in the Notice) and of certain rights under and interests in [ the [ each ] Policy.

We confirm that:

- (a) we have received the Notice and agree to comply with the instructions and requests contained in the Notice;
- (b) [ the ] each ] Policy is in full force and effect;
- (c) all premiums and other moneys payable in respect of [the] each ] Policy have been duly and promptly paid in full;
- (d) we have not received notice of any assignment, encumbrance, interest, claim or right, in favour of any third party, of, over or in respect of [ any ] the ] Policy or any rights under or interests in [ any [ the ] Policy; and
- (e) we do not hold or have, nor will we claim, assert, create or make, any encumbrance, interest, counterclaim, right of set-off or other right over or in respect of [any [ the ] Policy.

We are aware that you are relying on this letter in connection with your rights under the Assignment (as defined in the Notice).

This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of [ *insurance company/society* ]

copy: [ *Assignor* ]

**Chargor**

Executed as a deed by \_\_\_\_\_ )  
**SO Energy Trading Limited** acting by a )  
director in the presence of: )

Signature of witness: .....

Name of witness: .....


Address .....  
.....  
.....

**Axpo**

Executed as a deed by )  
**Axpo Solutions AG** acting by )  
Harald Gauck and )  
Rudolf Anderegg )  
being persons who )  
in accordance with the law of )  
Switzerland are acting under the )  
authority of Axpo Solutions AG )  
in the presence of: )

  
Harald Gauck  
Head Controlling & Services

Authorised Signatory

  
Rudolf Anderegg  
Lead Business Projects EE

Authorised Signatory 