

## Security Agency Agreement

**Dated 19 July 2022 (effective as of 6 June 2022)**

**VMMEA Obligor Limited**  
(Obligor)

**Connect Arabia Mobile Virtual Network Operator Services W.L.L.** (trading as Virgin  
Mobile Kuwait)  
(Mortgagor)

**VMMEA Issuer Limited**  
(Trustee)

**Kuwait Financial Centre K.P.S.C.** (trading as Markaz)  
(Security Agent)

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# Security Agency Agreement

Dated 19 July 2022 (effective as of 6 June 2022)

## Between

- (1) **VMMEA Obligor Limited**, a private limited company organised under the laws of Jersey, and having its registered office at 4<sup>th</sup> Floor, Northern Suite, Channel House, Green Street, St Helier, Jersey JE2 4UH (the **Obligor**);
- (2) **Connect Arabia Mobile Virtual Network Operator Services W.L.L.** (trading as Virgin Mobile Kuwait), a company incorporated in Kuwait with company number 405528 whose registered office is at Mabanee 1 Building, Floor 1, Office 5, Salhiya Street, Kuwait City, Kuwait (the **Mortgagor**);
- (3) **VMMEA Issuer Limited**, a private limited company organised under the laws of Jersey and having its registered office at 4<sup>th</sup> Floor, Northern Suite, Channel House, Green Street, St Helier, Jersey JE2 4UH, (registered company number 138747) (in this capacity, the **Trustee**); and
- (4) **Kuwait Financial Centre K.P.S.C.** (trading as Markaz), acting in its capacity as security agent for and on behalf of the Secured Parties (in this capacity, the **Security Agent**).

## It is agreed:

### 1 Definitions and Interpretation

#### 1.1 Definitions

Capitalised terms and expressions which are used but not defined herein shall have the meanings assigned to them in the Conditions, except where the context otherwise requires or unless otherwise stated. In addition, in this Security Agency Agreement:

**Affiliate** means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**Appointee** means any attorney, manager, agent, delegate, Security Delegate, nominee, custodian, Receiver or other person appointed by the Security Agent in accordance with this Agreement and/or the Transaction Security Document.

**Business Day** has the meaning given to it in the Conditions.

**Conditions** means the terms and conditions of the Certificates which shall be substantially in the form set out in Schedule 2 of the Declaration of Trust and shall be endorsed on the Individual Certificate subject to amendment and completion as referred to in the first paragraph of Schedule 2 of the Declaration of Trust and any reference to any particularly numbered Condition shall be construed accordingly.

**Confidential Information** means all information relating to the Obligor, the Trustee, the Mortgagor, this Agreement or the Transaction Security Document or which a Security Agent becomes aware in its capacity as a Security Agent or which is received by a Security Agent in relation to this Agreement or the Transaction Security Document from the Obligor, the Trustee, the Mortgagor or any of its advisers in whatever form, and includes information given

orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a result of any breach by that Security Agent of Clause 20 (*Confidentiality*);
- (b) is identified in writing at the time of delivery as non-confidential by the Obligor, the Trustee, the Mortgagor or any of its advisers; or
- (c) is known by that Security Agent before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Security Agent after that date, from a source which is, as far as that Security Agent is aware, unconnected with the Obligor, the Trustee and/or the Mortgagor and which, in either case, as far as that Security Agent is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**Confidentiality Undertaking** means a confidentiality undertaking in a form agreed between the Trustee and a Security Agent.

**Declaration of Trust** means the declaration of trust dated 19 July 2022 between the Trustee and the Obligor.

**Enforcement Request** has the meaning given to it in Clause 5.1.1 (*Enforcement*).

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**FATCA Deduction** means a deduction or withholding from a payment under a Transaction Document required by FATCA.

**Holding Company** means in relation to a person any other person in respect of which it is a Subsidiary.

**Kuwait** means the State of Kuwait.

**Liabilities** means any loss, damage, cost, fee, charge, claim, demand, expense, diminution in value, judgment, action, proceeding, or any other liability whatsoever (including, without limitation, in respect of Tax) and including any value added tax or similar Tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis.

**Mandate Letter** means that mandate letter dated 31 October 2021 entered into by the Security Agent and the Mortgagor in connection to the provision of security agency services.

**Outstanding Amount** means at any time, the aggregate of the Secured Obligations which are owing, at such time to the Secured Parties under the Transaction Documents.

**Party** means a party to this Agreement.

**Receiver** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Secured Property.

**Secured Obligations** means all the liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by the Mortgagor (in any capacity) to any Secured Party under the Transaction Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**Secured Party** means the Trustee, the Security Agent and the Certificateholders (as represented by the Trustee pursuant to the terms of the Declaration of Trust) and any Receiver or Security Delegate.

**Secured Property** means all the assets of the Mortgagor which from time to time are expressed to be, subject to Transaction Security.

**Security** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Security Delegate** means any delegate, agent, attorney or co-Security Agent appointed by the Security Agent.

**Subsidiary** means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty (50) per cent of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through ownership of voting capital, by contract or otherwise.

**Tax** means any tax, levy, impost, duty or other charge, retention or withholding of a similar nature (including any penalty or profit payable in connection with any failure to pay or any delay in paying any of the same).

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Transaction Security Document, other than a FATCA Deduction.

**Tax Payment** means either the increase in a payment made by the Mortgagor to the Security Agent under Clause 8.1 (*Tax gross up*) or a payment under Clause 8.2 (*Tax indemnity*).

**Transaction** means the U.S.6,500,000 certificates to be issued by the Trustee.

**Transaction Documents** means:

- (a) this Agreement; and
- (b) each Transaction Document (as defined in the Conditions).

**Transaction Security** means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Document.

**Transaction Security Document** means the Kuwait business premises mortgage between the Security Agent and the Mortgagor dated 6 June 2022.

## 1.2 Construction

- 1.2.1 All references to interest shall be to interest accruing from day to day and calculated on the basis of actual days elapsed and a year of three hundred and sixty (360) days;
- 1.2.2 Where the context of this Agreement so allows words importing the singular include the plural and vice versa;
- 1.2.3 Unless otherwise indicated reference to a specified Clause or Recital shall be construed as a reference to that specified Clause or Recital to this Agreement;
- 1.2.4 Section and Clause headings are for ease of reference only and do not form part of this Agreement;
- 1.2.5 Unless a contrary indication appears any reference in this Agreement to:
- (a) the **Security Agent**, the **Trustee**, the **Obligor**, the **Mortgagor**, a **Secured Party** or any **Party** shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, in the case of a Security Agent, any person for the time being appointed as a Security Agent or Security Agents in accordance with this Agreement;
  - (b) **assets** includes present and future properties, revenues and rights of every description;
  - (c) a **Transaction Document** or any other agreement or instrument is a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
  - (d) a **person** shall be construed as a reference to any person firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (e) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (f) wherever in this Agreement provision is made for the giving of notice, consent, approval, certificate or determination by any person then unless otherwise stated such notice, consent, approval, certificate or determination shall be in writing and the words **notify**, **approve**, **certify** and **determine** shall be construed accordingly;
  - (g) all **dates** referred to in this Agreement shall be ascertained in accordance with the **Gregorian calendar**; and
  - (h) **including** or **includes** means without limiting the generality of the foregoing or without limitation.

### **1.3 Third party rights**

- 1.3.1 Unless expressly provided to the contrary in a Transaction Document, a person who is not a Party has no right to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.2 Notwithstanding any term of any Transaction Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## **2 Role of the Security Agent**

### **2.1 Agency**

- 2.1.1 The Trustee irrevocably appoints (and each of the Obligor and Mortgagor acknowledges) the Security Agent as agent for itself and the Security Agent in accordance with the terms and conditions of this Agreement.
- 2.1.2 The Parties agree that the Security Agent as security agent under this Agreement, shall hold the Transaction Security Document (and the Transaction Security) for the Trustee in accordance with the terms and conditions of this Agreement.
- 2.1.3 The Parties hereby irrevocably authorise the Security Agent:
  - (a) to execute all the documents approved by the Parties for execution by the Security Agent in relation to the Transaction Security and any amendments thereto; and
  - (b) to take such actions, and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Security Agent by this Agreement, together with such powers and discretions as are reasonably incidental thereto in relation to the Transaction Security Document and the Transaction Security.
- 2.1.4 Any action taken by the Security Agent under or in relation to this Agreement or the Transaction Security Document with the requisite authority, or on the basis of appropriate instructions received from the Trustee, shall be binding on all Secured Parties.
- 2.1.5 Each of the Parties authorises the Security Agent to perform, on their behalf, those duties, obligations and responsibilities, and to exercise the rights, powers, authorities and discretions, expressly specified in this Agreement or in the Transaction Security Document (and no others shall be implied).
- 2.1.6 The relationship of the Secured Parties to the Security Agent shall be construed as one of principal and agent.
- 2.1.7 For the avoidance of any doubt, the role of the Security Agent pursuant to this Clause 2, the Transaction Security Document or any other document (if any) shall be exclusively undertaken in the territory of Kuwait and not in any other jurisdiction.
- 2.1.8 The Parties acknowledge that the Transaction Security Document contains a promise to mortgage in the event of the issuance of the Second Sukuk (as defined in the Conditions) and, thus, the Secured Obligations will be increased by U.S.\$6,500,000. The Parties hereto agree to amend this Security Agency Agreement as required to extend the appointment of the Security Agent in respect of such Second Sukuk being issued.

## **2.2 Parallel Debt (Covenant to pay the Security Agent)**

- 2.2.1 Notwithstanding any other provision of this Agreement, the Mortgagor hereby irrevocably and unconditionally undertakes to promptly pay to the Security Agent, as creditor in its own right and not as a representative of the Secured Parties, sums equal to and in the currency of each amount payable by the Mortgagor to each of the Secured Parties under each of the Transaction Documents as and when that amount falls due for payment under the relevant Transaction Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Mortgagor, to preserve its entitlement to be paid that amount.
- 2.2.2 The Security Agent shall have its own independent right to demand payment of the amounts payable by the Mortgagor under this Clause 2.2, irrespective of any discharge of the Mortgagor's obligation to pay those amounts to the other Secured Parties resulting from failure by it to take appropriate steps, in insolvency proceedings affecting the Mortgagor, to preserve its entitlement to be paid those amounts.
- 2.2.3 Any amount due and payable by the Mortgagor to the Security Agent under this Clause 2.2 shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Transaction Documents and any amount due and payable by the Mortgagor to the other Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 2.2.

## **2.3 No Independent Power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under a Transaction Security Document except through the Security Agent.

## **3 Application of Proceeds**

### **3.1 Order of Application**

All moneys from time to time received or recovered by a Security Agent under Clause 2.2 (*Parallel Debt (Covenant to pay the Security Agent)*) and/or in connection with the realisation or enforcement of all or any part of the Transaction Security constituted by the Transaction Security Document to which a Security Agent is party shall be held by that Security Agent as agent and paid, to the extent permitted by applicable law (subject to the provisions of this Clause 3), in the following order of priority:

- (a) firstly, in or towards payment of Liabilities, remuneration and other sums payable to the Security Agent and any Appointees under or in connection with this Agreement and the Transaction Security Document (or the transactions contemplated by those documents) and/or in relation to the discharge of duties and obligations of the Security Agent and any Appointee under this Agreement or the Transaction Security Document including, any legal fees and costs relating to the appointment of legal counsel for the purposes of enforcing the Transaction Security Document pursuant to Clause 5 (*Enforcement*) of this Agreement; and;
- (b) secondly, in payment to the Trustee, for its own behalf and on behalf of the Secured Parties, for application by the Trustee in accordance with Condition 4(b) (*Application*

*of Proceeds from Trust Assets*) of the Conditions, towards the discharge of the Secured Obligations; and

the balance, if any, in payment to the Mortgagor.

### **3.2 Investment of Proceeds**

Prior to the application of the proceeds of the Transaction Security constituted by the Transaction Security Document to which the Security Agent is a party, in accordance with Clause 3.1 (*Order of Application*), the Security Agent may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 3 (*Application of Proceeds*).

### **3.3 Currency Conversion**

- 3.3.1 For the purpose of, or pending the discharge of, any of the Secured Obligations, the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.
- 3.3.2 The obligations of the Mortgagor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **3.4 Permitted Deductions**

The Security Agent shall be entitled but not obliged:

- (a) to set aside by way of reserve amounts required to meet; and
- (b) to make and pay, in each case any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required,

by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Secured Property, or as a consequence of performing its duties, or by virtue of its capacity as a Security Agent under any of the Transaction Documents to which it is a party or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

### **3.5 Discharge of Secured Obligations**

- 3.5.1 Any payment to be made in respect of the Secured Obligations owing to the Secured Parties by the Security Agent may be made by the Security Agent to the Trustee on behalf of the Secured Parties and any payment so made shall be a good discharge to the extent of that payment, by the Security Agent to the Trustee.
- 3.5.2 The Security Agent is under no obligation to make payment to the Secured Parties under Clause 3.5.1 in the same currency as that in which the relevant Outstanding Amounts are denominated.

### **3.6 Sums received by the Obligor or Mortgagor**

If the Obligor or Mortgagor receives any sum which, pursuant to any of the Transaction Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause 3 (*Application of Proceeds*).

## **4 Security Agents' Actions**

### **4.1 Security Agents' Instructions**

4.1.1 The Security Agent shall:

- (a) unless a contrary indication appears in a Transaction Document to which it is a party, act (or refrain from acting) in accordance with any instructions given to it by the Trustee and shall be entitled to assume:
  - (i) that any instructions received by it from the Trustee are duly given by or on behalf of the relevant Secured Party in accordance with the terms of the Transaction Documents; and
  - (ii) unless it has received actual notice of revocation, that any instructions or directions given by the Trustee have not been revoked; and
  - (iii) if it receives any instructions or directions to act in relation to this Agreement or the Transaction Documents, that all applicable conditions for so acting have been satisfied;
- (b) be entitled to request instructions, or clarification of any direction, from the Trustee as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it; and
- (c) be entitled to carry out all dealings with the other Secured Parties through the Trustee and may give to the Trustee any notice or communication required to be given by the Security Agent to the other Secured Parties (or any of them).

4.1.2 The Trustee will only instruct the Security Agent in accordance with the terms of the Transaction Documents.

4.1.3 Unless a contrary indication appears in this Agreement, any instructions given to the Security Agent by the Trustee shall override any conflicting instructions given by any other Parties (other than the Trustee, as applicable) and will be binding on all Secured Parties.

4.1.4 Clause 4.1.3 above shall not apply:

- (a) where a contrary indication appears in this Agreement; or
- (b) in respect of any provision which, in the opinion of the Security Agent, protects the Security Agent's own position, rights, entitlements, and interests (of whatsoever nature) in its personal capacity as opposed to its role of a Security Agent for the Secured Parties.

## 4.2 Security Agents' Actions

Subject to the other provisions of this Clause 4 (*Security Agents' Actions*):

- (a) the Security Agent may, in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Transaction Documents which in its absolute discretion it considers to be for the protection and benefit of all of the Secured Parties; and
- (b) at any time after receipt by the Security Agent of an Enforcement Request, the Security Agent may, and shall if so directed by the Trustee, take any action as in its sole discretion it thinks fit to enforce the Transaction Security constituted by the Transaction Security Document.

## 4.3 Security Agents' Rights

The Security Agent may:

- (a) assume (unless it has received actual written notice to the contrary in its capacity as a Security Agent from the Trustee) that:
  - (i) no Dissolution Event has occurred and the Obligor or Mortgagor is not in breach of, or in default of, its obligations under any of the Transaction Documents; and
  - (ii) any right, power, authority or discretion vested by any Transaction Document in any person has not been exercised;
- (b) if it receives any instructions or directions from the Trustee to take any action in relation to the Transaction Security Document (including as to enforcement), assume that all applicable conditions under the Transaction Documents to which it is a party for taking that action have been satisfied;
- (c) without prejudice to Clause 9.3 (*Limitation of Mortgagor's Liability*), engage, pay for and rely (at the cost of the Mortgagor) on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Agent or by the Trustee) whose advice or services may at any time seem necessary, expedient or desirable;
- (d) without prejudice to the generality of paragraph (c) above or paragraph (e) below, at any time engage and pay (at the cost of the Mortgagor) for the services of any lawyers to act as independent counsel to the Security Agent, (and so separate from any lawyers instructed by the Trustee) if the Security Agent, in its reasonable opinion deems this to be desirable;
- (e) rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable to any person including (without limitation) for any Liabilities whatsoever arising as a result of its so relying;
- (f) rely upon any communication, warranty, representation, notice or document believed by it (at its sole discretion) to be genuine, correct and appropriately authorised and, as to any matters of fact which might reasonably be expected to be within the

knowledge of the Secured Party, the Mortgagor, upon a certificate signed by or on behalf of that person;

- (g) call for and rely on a certificate from a Party:
  - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of such Party; or
  - (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (i) above, may assume the truth and accuracy of that certificate.
- (h) rely upon information provided by the Mortgagor in relation to the Secured Property under the Transaction Security Document;
- (i) disclose to any other Party any information it reasonably believes it has received as the Security Agent under the Transaction Documents; and
- (j) without prejudice to Clause 9.3 (*Limitation of Mortgagor's Liability*), refrain from acting in accordance with the instructions of the Trustee (including bringing any legal action or proceeding arising out of or in connection with the Transaction Documents) until it has received any indemnification and/or security from the Mortgagor that it may in its absolute discretion require (whether by way of payment in advance or otherwise and which may be greater in extent than that contained in the Transaction Documents and which may include payment in advance) for all Liabilities which it may incur in bringing such action or proceedings.

Notwithstanding anything to the contrary in this Agreement or any Transaction Document, any reference to the Security Agent acting in its discretion, as it sees fit or any analogous term shall not oblige the Security Agent to exercise any such discretion and the Security Agent shall be required at all times (subject to being indemnified and/or secured to its satisfaction by the Mortgagor in accordance with the terms of this Agreement and except insofar as such determination is for the purpose of enabling the Security Agent to protect its own interests or receive sums in accordance with the terms of this Agreement for its own account) to act in accordance with the instructions of the Trustee.

#### **4.4 Security Agents' Duties**

- 4.4.1 The Security Agent's duties under the Transaction Documents and this Agreement are solely mechanical and administrative in nature. The Trustee, Mortgagor and Obligor hereby expressly acknowledge that the Security Agent has no knowledge of nor is it involved in or responsible for verifying the compliance of any of the Trustee, the Mortgagor or the Obligor of their obligations under any of the Transaction Documents or any related document whatsoever.
- 4.4.2 The Security Agent shall only have the duties and responsibilities expressly set out in this Agreement.
- 4.4.3 The Security Agent shall as soon as reasonably practicable inform the Trustee of:

- (a) the contents of any notice or document received by it in its capacity as a Security Agent from the Mortgagor under this Agreement or any Transaction Security Document; and
- (b) the occurrence of any Dissolution Event or any default by the Obligor or Mortgagor in the due performance of or compliance with its obligations under this Agreement or the Transaction Security Document of which the Security Agent has received notice from any other party to this Agreement or the Transaction Security Document.

4.4.4 The Security Agent and any Appointee may act in relation to the Transaction Documents and the Transaction Security Document through its officers, employees and agents and shall not:

- (a) be liable for any error of judgment made by any such person; or
- (b) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, or

unless such error or such loss was caused by the Security Agent's or the Appointee's gross negligence or wilful misconduct.

#### **4.5 Excluded Obligations**

Notwithstanding anything to the contrary expressed or implied, in this Agreement or any Transaction Security Document, the Security Agent shall not:

- (a) constitute the Security Agent as an agent, trustee or fiduciary of the Obligor or Mortgagor;
- (b) except as otherwise expressly provided in this Agreement and without prejudice to the rights of the Certificateholders under Clause 15.1, be bound to accept instructions from anyone other than the Trustee regarding the enforcement of the Transaction Security Document;
- (c) be responsible for the due execution, legality, validity, adequacy or enforceability of any of the documents submitted by any of the Parties under this Agreement;
- (d) be bound to enquire or investigate as to:
  - (i) the occurrence or otherwise of any Dissolution Event; or
  - (ii) the performance, default or any breach by the Obligor, the Mortgagor or the Trustee of its obligations under any of the Transaction Documents; or
  - (iii) whether any other event specified in any Transaction Document has occurred;
- (e) be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account;
- (f) be bound to disclose to any other person (including but not limited to any Secured Party):
  - (i) any confidential information (including Confidential Information); or

- (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (g) be obliged to make any investigation as to the existence, accuracy or sufficiency of any legal or other opinions, searches, reports, certificates, valuations or investigations given or required in connection with the Secured Property or the Transaction Security Document (as applicable);
- (h) be obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality;
- (i) be under any obligations, or bear any duties, responsibilities or liabilities (whether fiduciary or otherwise) to the other Parties, other than those that are specifically and expressly provided for in this Agreement or the Transaction Security Document;
- (j) be obliged to expend or risk its own funds in the performance of its duties or otherwise incur any liability, obligation or responsibility in the exercise of any right, power, authority or discretion;
- (k) be responsible for any maintenance or repair of the Secured Property, including any fixtures, plant or machinery or for compliance with planning and environmental legislation, regulations and bye-laws relating to the Secured Property, any conditions attaching to any planning permissions or any other permissions relating to or affecting the Secured Property or any notices or other orders made by any planning, environmental or other public body in respect of all or any part of the Secured Property; or
- (l) have or be deemed to have any duty, obligation or responsibility to, or a relationship of trust or agency with the Obligor or the Mortgagor, or a relationship of trust with the Trustee.

#### **4.6 Exclusion of Security Agents liability**

Unless caused directly by its gross negligence or wilful misconduct, neither the Security Agent nor any Appointee (including, for the avoidance of doubt, their respective directors, officers and agents) shall accept responsibility or be liable for:

- (a) any defect in or failure of the title which any person may have to any assets over which the Transaction Security is intended to be created by the Transaction Security Document;
- (b) any liabilities resulting from the investment or deposit at any financial institution of moneys which it invests or deposits in a manner permitted by the Transaction Documents;
- (c) the loss of any Transaction Security Document, title deed or other document relating to the Secured Property or the Transaction Security;
- (d) any liabilities incurred by any person by reason of any act, omission, misconduct or default on the part of any Appointee or any lawyer, accountant, surveyor or other expert engaged by the Security Agent;

- (e) the lack or inadequacy of any insurance of the Secured Property, or the failure of the Security Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind;
- (f) the adequacy, accuracy and/or completeness of any information (whether oral or written, including any certificate given to the Security Agent pursuant to Clause 4.3(g) above) supplied by the Security Agent or any other person in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under, or in connection with any Transaction Document or the Transaction Security;
- (g) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document or the Transaction Security;
- (h) any Liabilities arising as a result of taking or refraining from taking any action in relation to any of the Transaction Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Trustee or otherwise;
- (i) the exercise of, or the failure to exercise, any judgement, discretion or power given to it by or in connection with any of the Transaction Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Transaction Documents or the Transaction Security;
- (j) the failure by any relevant government authority in Kuwait to register, or its refusal to register, any of the Transaction Security for any reason whatsoever;
- (k) any failure or omission to perfect, or failure or omission to reperfect or maintain the perfection or registration of, or defect in perfecting, any Transaction Security created under the Transaction Security Document, including the failure to:
  - (i) obtain any license, consent, authorisation for the execution, validity, enforceability or admissibility in evidence of the Transaction Security Document;
  - (ii) register, file, effect or procure registration of or otherwise protect or perfect any rights or priorities created by the Transaction Security Document under any laws in any territory, or to give notice to any person of the execution of the Transaction Security Document;
  - (iii) require the deposit with it of any deed or document certifying, representing or constituting the title of the Mortgagor to the Transaction Security;
  - (iv) take, or to require the Mortgagor to take, any step to perfect its title to the Transaction Security or to render the same effective or to secure the creation of any ancillary security under any law or regulation; or
  - (v) require any further assurance in relation to the Transaction Security Document;
- (l) the payment of any Tax or stamp duty as a result of it:

- (i) holding any Security (including, but not limited to, the Transaction Security); and
  - (ii) enforcing any Security (including, but not limited to, the Transaction Security) held by it or in respect of any remuneration or other amounts payable to it for its own account;
- (m) any shortfall which arises on the enforcement or realisation of the Transaction Security, or for any loss suffered by any person as a result thereof; or
- (n) Without prejudice to the generality of the foregoing, any Liabilities (but not including any claim based on the fraud of the Security Agent) arising as a result of:
- (i) any act, event or circumstance not reasonably within its control unless directly caused by its gross negligence or wilful misconduct; or
  - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such Liabilities arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution, strikes, industrial action or pandemics.

#### **4.7 No proceedings**

No Party (other than the Security Agent and its Appointees) may take any proceedings against any officer, employee or agent of the Security Agent or its Appointees (as applicable) in respect of any claim it might have against the Security Agent or its Appointees (as applicable) or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Security Document or the Transaction Security constituted by the Transaction Security Document and any officer, employee or agent of the Security Agent, or its Appointees (as applicable) may rely on this Clause, subject to Clause 1.3 (*Third Party Rights*).

#### **4.8 Own responsibility**

It is understood and agreed by each Secured Party that at all times that Secured Party has itself been, and will continue to be, solely responsible for making its own independent appraisal of, and investigation into all risks arising under or in connection with the Transaction Documents including but not limited to:

- (a) the financial condition, creditworthiness, condition, affairs, status and nature of the Mortgagor;
- (b) any "know your customer" or other checks in relation to any person;
- (c) the legality, validity, effectiveness, adequacy and enforceability of each of the Transaction Documents and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with, the Transaction Documents or the Transaction Security;

- (d) whether that Secured Party has recourse, and the nature and extent of that recourse, against the Mortgagor or any other person or any of their respective assets under or in connection with the Transaction Documents, the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Transaction Documents;
- (e) the adequacy, accuracy and/or completeness of any information provided by any person in connection with the Transaction Documents, the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Transaction Documents; and
- (f) the right or title of any person in or to, or the value or sufficiency of any part of the Secured Property, the priority of any of the Transaction Security or the existence of any Security affecting the Secured Property,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters. For the avoidance of doubt, the Security Agent shall not be obliged to carry out any of the actions listed herein above, and shall not bear liability for not conducting such actions.

#### **4.9 Consequential loss**

Without prejudice to any provision of any Transaction Document excluding or limiting the liability of the Security Agent and its Appointees, any liability of any such Security Agent and its Appointees arising under or in connection with any Transaction Document or the Transaction Security to which it is party shall be limited to the amount of actual loss which has been finally judicially or in arbitration determined to have been suffered (as determined by reference to the date of default of the Security Agent or its Appointees (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to any such Security Agent or its Appointees (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent or its Appointees be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent or its Appointees (as the case may be) has been advised of the possibility of such loss or damages.

#### **4.10 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Mortgagor to any of the Secured Property;
  - (i) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Transaction Documents to which it is a party or the Transaction Security constituted by the Transaction Security Document;
  - (ii) register, file, perfect or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security constituted by the Transaction Security Document) under any applicable laws in any jurisdiction

or to give notice to any person of the execution of any of such Transaction Documents or of the Transaction Security constituted by the Transaction Security Document;

- (b) take, or to require the Mortgagor to take, any steps to perfect its title to any of the Secured Property or to render the Transaction Security constituted by the Transaction Security Document effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
- (c) require any further assurances in relation to the Transaction Security Document.

#### **4.11 Insurance by Security Agent**

The Security Agent shall not be under any obligation to insure any of the Secured Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain or renew insurance. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

#### **4.12 Acceptance of Title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, the right and title that the Mortgagor may have to any of the Secured Property or the value, existence, and sufficiency of such Secured Property, and shall not be liable for or bound to require the Mortgagor to remedy any defect in its right or title.

#### **4.13 Refrain from Illegality**

Notwithstanding anything else herein contained, the Security Agent may refrain without liability from doing anything that would or might in its opinion be contrary to any law of any state or jurisdiction (including but not limited to Kuwait, the United States, England & Wales, Jersey or any jurisdiction applicable to it and forming a part of it) or any directive or regulation of any agency of any such state or jurisdiction and may without liability do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

#### **4.14 Business with the Obligor or Mortgagor**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Mortgagor or any related person.

#### **4.15 Agency division separate**

4.15.1 In acting as agent for the Secured Parties, the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

4.15.2 If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

#### **4.16 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the

trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it with due care under this Agreement (save for as a result of gross negligence or wilful default on the part of the Security Agent) or be bound to supervise the proceedings or acts of any person.

#### **4.17 No liability as mortgagee in possession**

Neither the Security Agent nor its Appointees shall be liable to account as a mortgagee in possession in respect of all or any part of the Secured Property or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Secured Property to which a mortgagee in possession might otherwise be liable.

### **5 Enforcement**

#### **5.1 Enforcement**

5.1.1 Subject to this Clause 5.1, the Trustee may issue an enforcement request on and at any time after the occurrence of a Dissolution Event that is continuing (the **Enforcement Request**). Such Enforcement Request shall describe the Dissolution Event that is continuing and request the Security Agent to enforce the Transaction Security Document, whereupon the Security Agent shall enforce the Transaction Security Document, subject to the Security Agent being indemnified and/or secured to its satisfaction by the Mortgagor in accordance with the terms of this Agreement. The Security Agent shall be entitled to assume that no Dissolution Event has occurred and is continuing unless it receives an Enforcement Request in accordance with this Clause 5.1 and, following receipt of such an Enforcement Request, is entitled to assume that such Dissolution Event has occurred and is continuing until such time as the Trustee issues a notice pursuant to Clause 5.1.4 below.

5.1.2 At all times after the issue of an Enforcement Request and subject to the terms of this Agreement and the Transaction Security Document, the Security Agent will act on the instructions of the Trustee.

5.1.3 The Trustee shall not have any independent power to enforce, or to have recourse to, the Transaction Security or to exercise any rights or powers arising under the Transaction Security Document except through the Security Agent.

5.1.4 If the Trustee has either:

- (a) issued an Enforcement Request pursuant to Clause 5.1.1 above; or
- (b) otherwise notified the Security Agent that a Dissolution Event has occurred and is continuing,

then as soon as reasonably practicable after becoming aware that a Dissolution Event is no longer continuing, the Trustee (as applicable) shall notify the Security Agent in writing of the same.

#### **5.2 Distribution of proceeds of Enforcement**

All amounts received or recovered by the Security Agent in connection with the enforcement of the Transaction Security constituted by the Transaction Security Document shall be held by that Security Agent on trust and applied in accordance with Clause 3 (*Application of proceeds*).

## **6 Resignation of the Security Agent**

### **6.1 Resignation of the Security Agent**

- 6.1.1 The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Parties.
- 6.1.2 Alternatively, the Security Agent may resign by giving not less than thirty (30) day's notice to the other Parties in which case the Trustee may appoint a successor Security Agent after consultation with the Mortgagor.
- 6.1.3 If the Trustee has not appointed a successor Security Agent in accordance with Clause 6.1.2 within thirty (30) days after the notice of resignation was given, the Security Agent may (after consultation with the Trustee) (but is not obliged to do so) appoint a successor Security Agent for its role, providing the successor Security Agent shall be a known provider of security agency services in the market.
- 6.1.4 Without prejudice to Clause 9.3 (*Limitation of Mortgagor's Liability*), the retiring Security Agent shall, at the cost of the Mortgagor, unless resigning under Clause 6.1.1 at which case at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Transaction Documents to which the retiring Security Agent is a party.
- 6.1.5 The Security Agent's resignation notice shall only take effect upon:
- (a) the appointment of a successor; and
  - (b) the transfer, at the cost of the Mortgagor (when applicable) of all of the Transaction Security constituted by the Transaction Security Document to which the retiring Security Agent is a party to that successor.
- 6.1.6 Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Transaction Documents but shall remain entitled to the benefit of Clause 7 (*Fees and Expenses*) and Clause 9 (*Other Indemnities*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- 6.1.7 The Obligor, Mortgagor and the Trustee shall execute all such documents as may be reasonably required by the resigning Security Agent, or its successor in connection with the appointment of such successor as new Security Agent under this Clause 6 (*Resignation of the Security Agent*).

### **6.2 Delegation**

- 6.2.1 The Security Agent may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Transaction Documents.
- 6.2.2 The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent may think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for

any Liabilities incurred by reason of any misconduct, omission or default on the part of any delegate or sub-delegate unless such Liabilities were directly caused by the Security Agent's gross negligence or wilful misconduct.

### **6.3 Additional Security Agents**

6.3.1 The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate security agent or as a co-security agent jointly with it:

- (a) if it considers that appointment to be in the interests of the Secured Parties; or
- (b) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant; or
- (c) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Mortgagor, the Trustee of that appointment.

6.3.2 Any person so appointed (subject to the terms of this Agreement) shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment. The Security Agent shall not be bound to supervise, or be in any way responsible for any Liabilities incurred by reason of any misconduct or default on the part of any co-Security Agent unless such Liabilities were directly caused by the Security Agent's gross negligence or wilful misconduct.

6.3.3 Without prejudice to Clause 9.3 (*Limitation of Mortgagor's Liability*), the remuneration that the Security Agent may pay to any person, and any documented costs and expenses incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

## **7 Fees and Expenses**

### **7.1 Fees of the Security Agent**

The Mortgagor shall pay the fees and expenses of the Security Agent in accordance with the terms of the Mandate Letter.

### **7.2 Transaction expenses**

The Mortgagor shall promptly and nevertheless within three (3) Business Days of demand pay the Security Agent the amount of all documented costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security constituted by the Transaction Security Document; and
- (b) any other Transaction Document executed after the date of this Agreement.

### **7.3 Amendment costs**

If the Obligor, Mortgagor or Trustee (as the case may be) requests an amendment, waiver or consent, it shall, within three (3) Business Days of demand, reimburse the Security Agent for the amount of all documented costs and expenses (including legal fees) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### **7.4 Security Agents' ongoing costs**

Without prejudice to Clause 9.3 (*Limitation of Mortgagor's Liability*):

- (a) In the event of:
    - (i) a Dissolution Event;
    - (ii) the occurrence of any default by the Trustee, the Obligor or the Mortgagor in the due performance of or compliance with its obligations; or
    - (iii) the Security Agent considering it necessary or expedient (acting reasonably); or
    - (iv) the Security Agent being requested by the Mortgagor and/or the Trustee to undertake duties which the Security Agent and the Mortgagor agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under this Agreement or the Transaction Security Document,
- the Trustee and/or Mortgagor (as the case may be) shall pay to the Security Agent any additional remuneration that may be agreed between them; and
- (b) if the Security Agent and the Trustee and/or the Mortgagor (as the case may be) fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Mortgagor or, failing approval, nominated (on the application of the Security Agent) by an independent third party adjudicator (the costs of the nomination and of the investment bank being payable by the Mortgagor) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

### **7.5 Enforcement costs**

The Mortgagor shall, within five (5) Business Days of demand, pay to the Security Agent the amount of all documented costs and expenses (including legal fees and costs) incurred by the Security Agent in connection with the enforcement of, or the preservation of any rights under, this Agreement or the Transaction Security Document and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security Document constituted by the Transaction Security Document or enforcing these rights or investigating a Dissolution Event.

### **7.6 Deduction from amounts payable by a Security Agent**

If any Party owes an amount to the Security Agent under this Agreement or the Transaction Security Document, the Security Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Security Agent

would otherwise be obliged to make under this Agreement or the Transaction Security Document and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Transaction Documents, that Party shall be regarded as having received any amount so deducted.

## **8 Tax Gross Up and Indemnities**

### **8.1 Tax gross up**

- 8.1.1 All payments to be made by any Party to the Security Agent shall be made without any Tax Deduction, unless a Tax Deduction is required by law.
- 8.1.2 The Party making the payment to the Security Agent shall promptly upon becoming aware that it must make such a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Security Agent accordingly.
- 8.1.3 If a Tax Deduction is required by law to be made by any Party in respect of a payment to the Security Agent, the amount of the payment due from such Party shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 8.1.4 If a Tax Deduction is required to be made by any Party by law in respect of a payment to the Security Agent, such Party shall:
- (a) pay directly to the relevant authorities the full amount of the Tax Deduction;
  - (b) within thirty (30) days of making a Tax Deduction forward to the Security Agent an official receipt or other documentation evidencing such payment to such authority; and
  - (c) make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

### **8.2 Tax indemnity**

- 8.2.1 If the Security Agent is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under the Transaction Security Document, the Mortgagor and/or the Obligor (as the case may be) shall (within five (5) Business Days of written demand by the Security Agent) pay to the Security Agent an amount equal to the loss, liability or cost which the Security Agent determines has been (directly or indirectly) suffered for or on account of Tax by the Security Agent in respect of the Transaction Security Document.
- 8.2.2 Clause 8.2.1 above shall not apply:
- (a) with respect to any Tax assessed on the Security Agent:
    - (i) under the law of the jurisdiction in which the Security Agent is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Security Agent is treated as resident for tax purposes; or
    - (ii) under the law of the jurisdiction in which the Security Agent's branch is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Security Agent; or

- (b) to the extent a loss, liability or cost:
  - (i) is compensated for by an increased payment under Clause 8.1 (*Tax gross up*); or
  - (ii) relates to a FATCA Deduction required to be made by a Party.

8.2.3 If the Security Agent makes, or intends to make a claim under Clause 8.2.1, it shall as soon as reasonably practicable, notify the Mortgagor and/or the Obligor (as the case may be) of the event which will give, or has given, rise to the claim.

### **8.3 Tax Credit**

If the Mortgagor makes a Tax Payment and the Security Agent determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) the Security Agent has obtained and utilised that Tax Credit,

the Security Agent shall pay an amount to the Mortgagor which the Security Agent determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Mortgagor.

### **8.4 VAT**

8.4.1 All amounts expressed to be payable under a Transaction Security Document by any Party to the Security Agent which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly if VAT is or becomes chargeable on any supply made by the Security Agent to any Party under the Transaction Security Document and the Security Agent is required to account to the relevant tax authority for the VAT, that Party shall promptly pay to the Security Agent (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Security Agent shall promptly provide an appropriate VAT invoice to that Party).

8.4.2 Where a Transaction Security Document requires any Party to reimburse or indemnify the Security Agent that is a party to that Transaction Security Document for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Security Agent for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Security Agent reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

8.4.3 In relation to any supply made by the Security Agent to any Party under a Transaction Security Document to which it is party, if reasonably requested by the Security Agent, that Party must promptly provide the Security Agent with details of that Party's VAT registration and such other information as is reasonably requested in connection with the Security Agent's VAT reporting requirements in relation to such supply.

## 8.5 Currency indemnity

8.5.1 If any sum due to the Security Agent from the Obligor, and/or Mortgagor under the Transaction Security Document (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:

- (a) making or filing a claim or proof against the Mortgagor; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Obligor, and/or Mortgagor (as the case may be) shall, as an independent obligation, within five (5) Business Days of written demand, indemnify the Security Agent that is a party to that Transaction Security Document against any documented cost, loss or liability reasonably incurred as a result of the conversion including any discrepancy between:

- (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

8.5.2 Each of the Obligor, and the Mortgagor waives any right it may have in any jurisdiction to pay any amount under the Transaction Security Document in a currency or currency unit other than that in which it is expressed to be payable.

## 9 Other Indemnities

### 9.1 Indemnity

9.1.1 At any time, regardless of whether or not the Secured Obligations are outstanding, the Trustee, Obligor and Mortgagor shall, jointly and severally, indemnify the Security Agent and each Appointee on demand against all Liabilities, incurred by any of them:

- (a) in relation to or arising out of:
  - (i) all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document;
  - (ii) any failure by the Mortgagor to comply with its obligations under Clause 7 (*Fees and Expenses*);
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions and remedies vested in any of them by the Transaction Documents to which they are a party or by law;
  - (v) any default by the Trustee, Obligor and Mortgagor in the performance of any of the obligations expressed to be assumed by them in the Transaction Documents; or

- (b) acting as the Security Agent in relation to the Transaction Security Agreement or the performance of the terms of this Agreement (otherwise than as a result of the Security Agent's or an Appointee's gross negligence or wilful misconduct).

9.1.2 This indemnity shall survive the termination or expiry of this Agreement and whether or not the Security Agent is then a security agent hereunder.

## **9.2 Priority of Indemnity**

The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Secured Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 9.1 (*Indemnity*) from the Mortgagor and shall have a lien on the Transaction Security constituted by the Transaction Security Document and the proceeds of the enforcement of the Transaction Security constituted by the Transaction Security Document for all moneys payable to it under this Clause 9 (*Other Indemnities*).

## **9.3 Limitation of Mortgagor's Liability**

The Mortgagor shall only be liable pursuant to Clauses 4.3 (*Security Agents' Rights*), 6.1.4 (*Resignation of the Security Agent*), 6.3.3 (*Additional Security Agents*), 7.2 (*Transaction expenses*), and 7.3 (*Amendment costs*) to the extent that any such costs, claims, losses, expenses (including legal fees) and liabilities are reasonably incurred by the Security Agent.

## **10 Assignments**

No party to this Agreement may assign all or any of its rights or transfer any of its obligations under this Agreement except as expressly contemplated by this Agreement, or with the prior written consent of the other parties or as may be required by law.

## **11 Amendments and Releases**

### **11.1 Amendments**

11.1.1 Unless the provisions of any Transaction Document expressly provide otherwise and without prejudice to any rights of the Mortgagor pursuant to the Transaction Documents or otherwise, the Security Agent may, if authorised in writing by the Trustee, amend the terms of, waive any of the requirements of, or grant consents under, this Agreement or the Transaction Security Document, any such amendment, waiver or consent being binding on all the Parties and the Security Agent shall be under no liability whatsoever in respect thereof.

11.1.2 The prior written consent of the Trustee is required to authorise any amendment of any Transaction Security Document which would affect the nature of the scope of the Secured Property or the manner in which proceeds of enforcement are distributed or any amendment of this Clause 11.1 (*Amendments*).

11.1.3 No new or additional obligations may be imposed upon any person without the consent of that person.

11.1.4 Any amendment or waiver which relates to the rights or protections of the Security Agent in their personal capacity shall not be effective without the consent of the Security Agent.

## **11.2 Releases**

11.2.1 Upon a disposal of any of the Secured Property, whether or not such disposal is against a consideration:

- (a) pursuant to the enforcement of the Transaction Security constituted by the Transaction Security Document to which the Security Agent is a party, by the Security Agent; or
- (b) if that disposal is permitted under the Transaction Documents,

the Security Agent shall (at the cost of the Mortgagor) release that property from the Transaction Security constituted by the Transaction Security Document and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security constituted by the Transaction Security Document or other claim over that asset and to issue any certificate confirming such release and take any other action that the Security Agent considers necessary or desirable.

11.2.2 If the Security Agent is advised by the Trustee in writing that all of the Secured Obligations have been fully and finally discharged and none of the Secured Parties are under any commitment, obligation or liability (actual or contingent) to the Certificateholders in relation to the Transaction, the agency set out under this Agreement shall cease and the Security Agent shall (at the cost of the Mortgagor) release, without recourse or warranty, all of the Transaction Security constituted by the Transaction Security Document and the rights of the Security Agent under the Transaction Security Document.

11.2.3 The Security Agent shall not be required to consider whether any rights or obligations owed to the Secured Parties will be or are likely to be prejudiced by any release of the Transaction Security constituted by the Transaction Security Document under this Clause 11.2 and Clause 5.1 (*Enforcement*).

## **12 Miscellaneous**

### **12.1 Information**

The Obligor, Mortgagor and Trustee shall provide to the Security Agent, such information as the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as agent under this Agreement.

### **12.2 Mortgagor's Waiver**

The Mortgagor hereby waive, to the extent permitted under applicable law, all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time, provided that the proceeds of such are applied in accordance with applicable law or in discharge of the Secured Obligations without prejudice to Clause 3 (*Application of Proceeds*).

## **13 Remedies and Waivers, Partial Invalidity**

### **13.1 Remedies and Waivers**

13.1.1 No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or

remedy shall prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy.

- 13.1.2 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **13.2 Partial Invalidity**

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

## **14 Notices**

### **14.1 Communications in writing**

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

### **14.2 Addresses**

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

- (a) in the case of the Obligor:

4th Floor, Northern Suite  
Channel House, Green Street,  
St Helier,  
Jersey JE2 4UH

- (b) in the case of the Trustee:

4th Floor, Northern Suite  
Channel House, Green Street,  
St Helier,  
Jersey JE2 4UH

- (c) in the case of the Mortgagor:

Mabanee 1 Building  
Floor 1, Office 5  
Salhiya Street  
Kuwait City  
Kuwait

- (d) in the case of the Security Agent:

Universal Tower  
Ahmad Al Jaber St  
Kuwait City

sharq 23444  
Kuwait

or any substitute address or department or officer as the Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five (5) Business Days' notice.

### **14.3 Delivery**

- 14.3.1 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective, if by way of letter, when it has been left at the relevant address or five Business Days after being deposited with a courier of international repute with courier fees prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 14.2 (*Addresses*), if addressed to that department or officer.
- 14.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified (or any substitute department or officer as the Security Agent shall specify for this purpose).
- 14.3.3 Any communication or document which becomes effective, in accordance with Clause 14.3.1 after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **14.4 Notification of address**

Promptly upon changing their address, each Party shall notify the other Parties.

### **14.5 Electronic communication**

- 14.5.1 Any communication to be made between any two (2) Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (b) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- 14.5.2 Any such electronic communication as specified in Clause 14.5 to be made between the Parties and a Secured Party may only be made in that way to the extent that those two (2) Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- 14.5.3 Any such electronic communication as specified in Clause 14.5 made between any two (2) Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- 14.5.4 Any electronic communication which becomes effective, in accordance with Clause 14.5.3, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or

made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

- 14.5.5 Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 14.5.

#### **14.6 English language**

14.6.1 Any notice given under or in connection with this Agreement must be in English.

14.6.2 All other documents provided under or in connection with this Agreement must be:

- (a) in English; or
- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### **15 Enforcement of Rights**

15.1 The Trustee, and where the Trustee has failed to exercise its rights hereunder or under the Conditions, the Certificates or any other Transaction Document, Certificateholders of not less than 75 per cent. in aggregate face amount of the Certificates outstanding may at any time, at their discretion and without notice, take such proceedings and/or other steps as they may think fit against or in relation to each of the Trustee and/or the Security Agent to enforce their respective obligations under this Security Agency Agreement, the Declaration of Trust, the Certificates and any other Transaction Documents, without prejudice to the rights, protections and indemnities to which the Security Agent is entitled under this Agreement.

15.2 Proof that as regards any specified Certificate, the Trustee or the Security Agent (as the case may be) has defaulted in paying any amount due in respect of such Certificate (unless the contrary is proved) be sufficient evidence that the same default has been made as regards all other Certificates in respect of which the relevant amount is due and payable.

#### **16 Counterparts**

This Agreement 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 Agreement.

#### **17 Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of the State of Kuwait.

#### **18 Dispute Resolution**

Any dispute, claim, difference or controversy arising out of, or in connection with, this Agreement (including any dispute as to the existence, validity, interpretation, performance, breach or termination of this Agreement or the consequences of its nullity and any dispute

relating to any non-contractual obligation arising out of or in connection with it) (a Dispute) shall be referred to the courts of the State of Kuwait.

## **19 Waiver of immunity**

The Mortgagor waives generally all immunity they or their assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

## **20 Confidentiality and Waiver of Interest**

### **20.1 Confidential Information**

The Security Agent agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 20.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **20.2 Disclosure of Confidential Information**

The Security Agent may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives such Confidential Information as the Security Agent shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under this Agreement or the Transaction Security Document and to any of that person's Affiliates, representatives and professional advisers;
  - (ii) appointed by the Security Agent or by a person to whom paragraph (b)(i) above applies to receive communications, notices, information or documents delivered pursuant to this Agreement or the Transaction Security Document on its behalf;
  - (iii) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (iv) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (v) who is a Party; or,
- (vi) with the consent of the Mortgagor,

in each case, such Confidential Information as that Security Agent shall consider appropriate if:

- (A) in relation to paragraphs (b)(i) and (b)(ii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information; and
- (B) in relation to paragraphs (b)(iii) and (b)(iv) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Security Agent, it is not practicable so to do in the circumstances.

### **20.3 Confidentiality – Security Agent**

20.3.1 In acting as security agent and security trustee for the Secured Parties, the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

20.3.2 If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

20.3.3 Notwithstanding any other provision of this Agreement or the Transaction Security Document to the contrary to which the Security Agent is a party, the Security Agent is not obliged to disclose to any other person:

- (a) any confidential information; or
- (b) any other information

if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **20.4 Waiver of Interest**

20.4.1 Except as otherwise provided in this Agreement, each of the Security Agent, Trustee, the Mortgagor and the Obligor irrevocably agrees that no interest will be payable or receivable under or in connection with this Agreement and if it is determined that any interest is payable or receivable in connection herewith by a party, whether as a result of any judicial award or by operation of any applicable law or otherwise, such party agrees to waive any rights it may have to claim or receive such interest and further agrees that if any such interest is actually received by it, it shall promptly donate the same to a registered or otherwise officially recognised charitable organisation.

20.4.2 For the avoidance of doubt, nothing in this Clause 20.4 shall be construed as a waiver of rights in respect of Periodic Distribution Amounts, Sales Proceeds or profit of any kind howsoever described payable by the Obligor (in any capacity) or the Trustee (in any capacity) pursuant to the Transaction Documents and/or the Conditions, howsoever such amounts may be described or re-characterised by any court or arbitral tribunal.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SIGNATURES**

**The Obligor**

Mark O'Malley and Andy Gray on behalf of  
Belasko Corporate 3 Limited and Belasko  
SIGNED by Corporate 4 Limited )  
for and on behalf of )  
**VMMEA Obligor Limited** )



**The Mortgagor**

SIGNED by )  
for and on behalf of )  
**Connect Arabia Mobile Virtual Network** )  
**Operator Services W.L.L.** (trading as Virgin )  
Mobile Kuwait) )

**The Trustee**

Mark O'Malley and Andy Gray  
SIGNED by )  
for and on behalf of )  
**VMMEA Issuer Limited** )



**The Security Agent**

SIGNED by )  
for and on behalf of )  
**Kuwait Financial Centre K.P.S.C.** (trading )  
as Markaz) )

**SIGNATURES**

**The Obligor**

SIGNED by )  
for and on behalf of )  
**VMMEA Obligor Limited** )

**The Mortgagor**

SIGNED by ) *Muhammad Al-Khateeb*  
for and on behalf of )  
**Connect Arabia Mobile Virtual Network** )  
**Operator Services W.L.L.** (trading as Virgin )  
Mobile Kuwait) )



**The Trustee**

SIGNED by )  
for and on behalf of )  
**VMMEA Issuer Limited** )

**The Security Agent**

SIGNED by )  
for and on behalf of )  
**Kuwait Financial Centre K.P.S.C.** (trading )  
as Markaz) )

**SIGNATURES**

**The Obligor**

SIGNED by )  
for and on behalf of )  
**VMMEA Obligor Limited** )

**The Mortgagor**


SIGNED by )  
for and on behalf of )  
**Connect Arabia Mobile Virtual Network** )  
**Operator Services W.L.L. (trading as Virgin** )  
**Mobile Kuwait)** )

**The Trustee**

SIGNED by )  
for and on behalf of )  
**VMMEA Issuer Limited** )

**The Security Agent**

SIGNED by )  
for and on behalf of )  
**Kuwait Financial Centre K.P.S.C. (trading** )  
**as Markaz)** )

  
**ABDULLATIF W. ALNUSIF**  
**MANAGING DIRECTOR**