

This guarantee (**Guarantee**) is dated 19 July 2022 (**Effective Date**) between:

## **PARTIES:**

- (1) **Wafra International Investment Company KSCC**, a shareholding company established and organized under the laws of Kuwait, with its registered office at Al-Murqab, Abdulla Al-Mubark Street Block 1, Avenue #800012, Twin Tower, P.O. Box 27635, safat 13137, Kuwait (the **Guarantor**); and
- (2) **VMMEA Issuer Limited** (in its capacity as issuer of the Certificates and as trustee of the trusts created by the Declaration of Trust, the **Trustee**).

## **BACKGROUND:**

- (A) The Trustee proposes to issue trust certificates (the **Certificates**) in an aggregate face amount of U.S.\$6,500,000 (the **Facility Amount**). The Certificates will be constituted by the declaration of trust dated 19 July 2022 (the **Declaration of Trust**) between the Trustee and VMMEA Obligor Limited (the **Obligor**).
- (B) The Guarantor is required to enter into this Guarantee up to its Guaranteed Amount in favour of the Trustee to guarantee certain liabilities of the Obligor to the Trustee in respect of the Certificates.

## **AGREED TERMS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Capitalised terms and expression which are used but not defined herein shall have the meanings assigned to them in the terms and conditions of the Certificates scheduled to the Declaration of Trust, as modified from time to time (the **Conditions**), except where the context otherwise requires or unless otherwise stated. In addition, in this Guarantee:

**VMK:** 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 and that company's successors, permitted assigns and permitted transferees.

**Business Day:** a day other than a Friday, Saturday or public holiday in Kuwait.

**Certificate Obligations:** any and all payment obligations of the Obligor which are outstanding under or pursuant to the Transaction Documents.

**Guaranteed Amount:** an amount equal to the aggregate monetary value of the outstanding Facility Amount multiplied by the Parts Percentage. As at the Issue Date, the Guaranteed Amount is U.S.\$845,000, which equals 13 per cent. of the aggregate monetary value of the outstanding Facility Amount.

**Obligor:** VMMEA Obligor Limited.

**Parts Percentage:** the percentage of parts held by the Guarantor in VMK, as recorded in VMK's commercial registration extract issued by the Ministry of Commerce and Industry in Kuwait from time to time and in respect of the Guarantor's liability to make payment(s)

to the Trustee in accordance with this Guarantee, on the date on which such payment becomes due. As at the Issue Date, the Parts Percentage is 13 per cent.

**Rights:** the benefit of any Security Interest or any right of subrogation, indemnity, contribution or of proof in liquidation.

**Security Interest:** any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction.

**Transaction Documents:** has the meaning given to it in the terms and conditions of the Certificates scheduled to the Declaration of Trust as modified from time to time.

## 1.2 Interpretation

In this Guarantee:

- (a) Clause, Schedule and paragraph headings shall not affect the interpretation of this Guarantee;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (e) a reference to **writing** or **written** includes email;
- (f) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (g) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (h) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (i) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

## 2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor, irrevocably and unconditionally, guarantees to the Trustee the punctual discharge of the Certificate Obligations up to the Guaranteed Amount.

- 2.2 The Guarantor as principal obligor and as a separate and independent obligation from its obligation under Clause 2.1 agrees to indemnify and keep indemnified the Trustee on demand, without any further legal notice, procedure or order being required (but subject to Clause 3.5), from and against any and all direct losses, costs and expenses suffered or incurred by the Trustee arising out of, or in connection with, any failure of the Obligor to make any payment under the Certificate Obligations up to the Guaranteed Amount.
- 2.3 The Guarantor irrevocably and unconditionally, in favour of the Trustee, undertakes that if, on a day falling three Business Days prior to a Periodic Distribution Date, there is a shortfall between the Periodic Distribution Amounts due on the immediately following Periodic Distribution Date and Sales Proceeds received in respect of the Trust Assets, such that the Trustee would be unable to pay Periodic Distribution Amounts (including any additional amounts payable under Condition 9 (*Taxation*)) due to Certificateholders on such Periodic Distribution Date in full, the Guarantor shall, as an independent and primary obligation, subject to Clause 3.5, immediately pay to such Trustee the amount of such shortfall in the manner and currency prescribed by the Conditions for payment by such Trustee in respect of Certificates, provided that the aggregate amounts recoverable by the Trustee do not exceed the Guaranteed Amount.
- 2.4 For the avoidance of doubt, the maximum amount guaranteed by the Guarantor and which may be called under this Guarantee and the Guarantor's maximum liability to the Trustee in connection with this Guarantee and in relation to the Certificate Obligations shall at no time exceed the Guaranteed Amount as defined in this Guarantee. The Trustee hereby disclaims any right it may have in relation to, and undertakes not to claim, any amounts exceeding the Guaranteed Amount. The Trustee hereby agrees and acknowledges that it has no recourse to and is not being granted a lien, pledge or encumbrance of any kind whatsoever over the Guarantor's ownership interest in VMK. In the event an amount up to the Guaranteed Amount is called by the Trustee in connection with this Guarantee, then the Guarantor shall settle such amounts in cash.
- 2.5 This Guarantee shall take effect as a deed for the benefit of the Trustee (which holds the benefit of this Guarantee for the benefit of the Certificateholders from time to time).

### **3. TRUSTEE AND CERTIFICATEHOLDER PROTECTIONS**

- 3.1 This Guarantee is and shall at all times be a continuing guarantee and security, effective from the Effective Date until the date on which all the obligations of the Trustee and the Guarantor under or in respect of the Certificates have been discharged in full.
- 3.2 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:
- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy (however fundamental) which the Trustee may now or after the date of this Guarantee have from or against the Obligor and any other person in connection with the Certificate Obligations;
  - (b) any act or omission by the Trustee or any other person in taking up, perfecting or enforcing any Security Interest, indemnity, or guarantee from or against the Obligor or any other person;
  - (c) any termination, amendment, variation, novation, replacement or supplement of or to the Certificate Obligations;

- (d) any grant of time, indulgence, waiver or concession to the Obligor or any other person;
- (e) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Obligor or any other person;
- (f) any variation, increase, extension or addition of, or to any of the Trust Assets and/or the Transaction Documents and the Guarantor acknowledges that the Trust Assets may change in accordance with the provisions of the Additional Airtime Sale Undertaking Deed and the Sale Undertaking.

3.3 Without prejudice to the generality of Clause 3.2, the Guarantor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of, or to any of the Trust Assets and/or the Transaction Documents and acknowledges that the Trust Assets may change in accordance with the provisions of the Additional Airtime Sale Undertaking Deed and the Sale Undertaking.

3.4 Except as set out in Clause 3.5, prior to taking steps to enforce any of its rights and remedies under this Guarantee, the Trustee shall not be obliged, and the Guarantor waives any right it may have of first requiring the Trustee, to:

- (a) take any action or to obtain judgment in any court against the Obligor or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Obligor or any other person; or
- (c) make demand, enforce or seek to enforce any claim, right or remedy against the Obligor or any other person.

This waiver applies irrespective of any law or any provision of any Transaction Document to the contrary.

3.5 The Trustee undertakes that it will, before taking steps to enforce any of its rights and remedies under this Guarantee:

- (a) adhere to the provisions set out in the Conditions regarding the Obligor's failure to meet its obligations under the Transaction Documents, including notifications and cure periods (if any); and
- (b) following completion of the processes referred to in Clause 3.5(a), notify the Guarantor of the continued failure of the Obligor to meet its obligations under the Transaction Documents and permit the Guarantor a grace period of 60 days from the date of such notification in order to attempt to secure payment from VMK in accordance with the partners' agreement dated 27 June 2021 (as amended) entered into by the Guarantor, amongst others, and VMK.

3.6 The Guarantor warrants to the Trustee that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Obligor, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this Guarantee until the Certificate Obligations have been paid in full but:

- (a) if any of the Rights is taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Trustee for application in or towards the discharge of the Certificate Obligations under this Guarantee; and
  - (b) on demand by the Trustee, the Guarantor shall promptly transfer, assign or pay to the Trustee all other Rights and all monies from time to time held on trust by the Guarantor under this Clause 3.6.
- 3.7 The obligations of the Guarantor under this Guarantee are unconditional, direct, unsubordinated and unsecured obligations of the Guarantor and (save for certain obligations required to be preferred by law) rank pari passu, without any preference or priority, with all other unsecured obligations (other than subordinated obligations, if any) of the Guarantor from time to time outstanding.
- 3.8 This Guarantee shall be deposited with and held by the Trustee until the date on which all of the obligations of the Trustee and the Guarantor under or in respect of the Certificates have been discharged in full. The Guarantor hereby acknowledges the right of every Certificateholder to the production of this Guarantee.

#### **4. REPRESENTATIONS AND WARRANTIES**

- 4.1 The Guarantor makes the representations and warranties set out in this Clause and Clause 3.6 to the Trustee on the date of this Guarantee.
- (a) The Guarantor is a duly incorporated shareholding or limited liability company validly existing under the law of its jurisdiction of incorporation; and has the power to own its assets and carry on its business as it is being conducted.
  - (b) The Guarantor has the power to enter into and perform its obligations under this Guarantee; has taken all necessary action and obtained all required or desirable consents to enable it to enter into and perform its obligations under this Guarantee; and, the entering into and performance of its obligations under this Guarantee does not and will not contravene any of the Guarantor's constitutional documents, any agreement or instrument binding on the Guarantor, or any applicable law or regulation.
  - (c) This Guarantee constitutes the legal, valid, binding and enforceable obligation of the Guarantor enforceable in accordance with its terms.

#### **5. TAXATION**

- 5.1 The Guarantor will pay any stamp and other duties and taxes, including penalties and any other charges payable on or in connection with the execution of this Guarantee and any action taken by the Trustee to enforce the provisions of this Guarantee.
- 5.2 The Guarantor shall make all payments to be made by it under this Guarantee without any deduction or retention for tax, unless a deduction or retention for tax is required by law. If a deduction or retention for tax is required by law to be made by the Guarantor, the amount of the payment in respect of which the deduction or retention for tax is required to be made shall be increased to the amount which (after the deduction or retention for tax) will leave an amount equal to the payment which would have been due if no deduction or retention for tax had been required.

#### **6. MISCELLANEOUS**

## 6.1 Transfer

The Guarantor may not assign any of its rights or transfer any of its obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person without the prior written approval of the Trustee and the Guarantor (which approval shall not be unreasonably withheld, delayed or conditioned).

## 6.2 Waiver

- (a) No amendment of this Guarantee shall be effective unless it is in writing and signed by, or on behalf of, the Trustee (if applicable, with the consent of the Certificateholders pursuant to the Conditions) and the Guarantor.
- (b) A waiver of any right or remedy under this Guarantee, or any consent given under this Guarantee, is only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (c) A failure or delay by a party to exercise any right or remedy provided under this Guarantee or by law shall not constitute a waiver of that or any other right or remedy or prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (d) The rights and remedies provided under this Guarantee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## 6.3 Severance

If any provision (or part of a provision) of this Guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this Clause shall not affect the legality, validity and enforceability of the rest of this Guarantee.

## 6.4 Notices

- (a) **Delivery.** Any notice or other communication given to a party under or in connection with this Guarantee shall be in writing, delivered by courier (with a copy sent by email) and sent to:
  - (i) the Guarantor at the address set out on page 1 of this Guarantee (with a copy sent by email for the attention of Ali Jawad Behbehani at A.Behbehani@wafra-kuwait.com); and
  - (ii) the Trustee at the address set out on page 1 of this Guarantee (with a copy sent by email for the attention of Mark O'Malley at Mark.OMalley@belasko.com),

or to any other address as is notified in writing by one party to the other from time to time.

- (b) **Receipt.** Any notice or other communication given under or in connection with this Guarantee shall be deemed to have been received on the third Business Day after

dispatch (or the next Business Day, if received other than on a Business Day). For the purposes of this clause, all references to time are to local time in the place of deemed receipt.

## **6.5 Benefit of Guarantee**

The Guarantor agrees that the Trustee (or the Certificateholders, on the terms of Condition 4(c)(ii) only) may enforce this Guarantee against it in accordance with its terms and the terms of the Declaration of Trust.

## **6.6 Governing law**

This Guarantee shall be governed by and construed in accordance with the laws of Kuwait.

## **6.7 Jurisdiction**

Each party irrevocably agrees that any dispute or claim arising out of or in connection with this Guarantee (including non-contractual disputes or claims), including any dispute regarding its subject matter, validity or termination, shall be referred to and finally resolved by the Courts of Kuwait.

## **6.8 Waiver of Interest**

- (a) Each of the Trustee and the Guarantor irrevocably agrees that no interest will be payable or receivable under or in connection with this Guarantee 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.
- (b) For the avoidance of doubt, nothing in this Clause 6.8 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.

## **6.9 Shari'ah compliance**

To the extent permitted by law, each of the parties hereto hereby agrees that it has accepted the Shari'ah compliant nature of these presents and the Transaction Documents to which it is a party and further agrees that: (a) it shall not claim that any of its obligations under these presents and the Transaction Documents to which it is a party (or any provision thereof) is ultra vires or not compliant with the principles of Shari'ah; (b) it shall not take any steps or bring any proceedings in any forum to challenge the Shari'ah compliance of these presents and the Transaction Documents to which it is a party; and (c) none of its obligations under these presents and the Transaction Documents to which it is a party shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that these presents and the Transaction Documents to which it is a party are not compliant with the principles of Shari'ah.

This Agreement has been executed and takes effect on the date stated at the beginning of it.

Signed:



Name: Mark O'Malley and Andy Gray

For and on behalf of

**VMMEA Issuer Limited**

Signed:

Name:

For and on behalf of

**Wafra International Investment Company KSCC**

Signed:

Name:

For and on behalf of

**VMMEA Issuer Limited**

Signed:

A handwritten signature in blue ink, appearing to be 'Ghazi Al-Hajeri', written over a horizontal line.

Name: Ghazi Al-Hajeri

For and on behalf of

**Wafra International Investment Company KSCC**