

# MR01

## Particulars of a charge

234116/13



**A fee is payable with this form.**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online.**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where the  
instrument Use form MR01



LD7 11/07/2014 #61  
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If the form is delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

### 1 Company details

Company number 03128071

Company name in full ERM Limited

For official use

→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 27/06/2014

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name HSBC Corporate Trustee Company (UK) Limited  
(the Security Agent)

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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Particulars of a charge

4

**Brief description**

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Brief description

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

**Other charge or fixed security**

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

8

**Trustee statement <sup>1</sup>**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X Allen + Overy LLP  
on behalf of the chargee  
9 July 2014 X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record

Contact name Brandon Soeiro

Company name Allen & Overy LLP

Address One Bishops Square

Post town London

County/Region

Postcode E 1 6 A D

Country UK

DX

Telephone 020 3088 0000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank



### Checklist

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



### Important information

**Please note that all information on this form will appear on the public record**



### How to pay

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below**

#### For companies registered in England and Wales

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

#### For companies registered in Scotland:

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

#### For companies registered in Northern Ireland.

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 NR Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



FILE COPY

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

Company number: 3128071

Charge code: 0312 8071 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th June 2014 and created by ERM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th July 2014

Given at Companies House, Cardiff on 18th July 2014



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

EXECUTION VERSION

## SHARE MORTGAGE

DATED 27 June 2014

BETWEEN

ERM HOLDINGS B.V.

and

ERM LIMITED

as Mortgagors

- and -

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

as Security Agent

Except for material redacted pursuant to  
s859A of the Companies Act 2006 I  
certify that this is a correct copy of the  
original document:

Allen + Overy LLP

Bishops Square, London

9 July 2014

**ALLEN & OVERY**

Allen & Overy

0015437-0009160 HK 16472125 4

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Signatories..... 24

**THIS DEED** is dated 27 June 2014 and made

**BETWEEN**

- (1) **THE COMPANIES** listed in Schedule 1 (Mortgagors) as mortgagors (each a **Mortgagor**); and
- (2) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** (the **Security Agent**) as security agent and trustee for the Secured Parties (as defined in the Intercreditor Agreement defined below)

**BACKGROUND:**

- (A) ERM Limited acceded as a guarantor to each of the Second Lien Facilities Agreement and Senior Facilities Agreement (each as defined below) pursuant to an accession deed dated 30 May 2014
- (B) ERM Holdings B.V. acceded as a guarantor to each of the Second Lien Facilities Agreement and Senior Facilities Agreement (each as defined below) pursuant to an accession deed dated on or about the date of this Deed
- (C) Each Mortgagor enters into this Deed in connection with the Secured Debt Documents (as defined below).
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a Party (as defined below) may only execute this document under hand

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Deed

**Declared Default** means

- (a) an Event of Default pursuant to clause 29.1 (Non-Payment) or 29.18 (United States Bankruptcy Laws) of the Senior Facilities Agreement or clause 24.1 (Non-Payment) or 24.17 (United States Bankruptcy Laws) of the Second Lien Facilities Agreement, and/or
- (b) an Event of Default which has resulted in the Security Agent exercising any of its rights under clause 29.19 (Acceleration) of the Senior Facilities Agreement or clause 24.18 (Acceleration) of the Second Lien Facilities Agreement.

**Default Rate** means the rate at which default interest is payable under clause 14.3 (Default interest) of the Senior Facilities Agreement.

**Event of Default** means an Event of Default as defined in the Senior Facilities Agreement or the Second Lien Facilities Agreement

**Intercreditor Agreement** means the intercreditor agreement dated 16 May 2014 and made between, among others, Emerald 2 Limited as the Parent, HSBC Bank Plc as the Senior Agent, Deutsche Bank AG, London Branch as the Second Lien Agent and the Security Agent.

**Mortgaged Company** means ERM-Hong Kong, Limited (香港環境資源管理顧問有限公司)

**Party** means a party to this Deed

**Property Ordinance** means the Conveyancing and Property Ordinance (Cap 219 of the Laws of Hong Kong)

**Receiver** means a receiver and manager or (if the Security Agent so specifies in the relevant appointment) a receiver, in each case, appointed under this Deed

**Related Rights** means

- (a) any dividend, interest or other distribution paid or payable in relation to any Shares; and
- (b) any right, money or property accruing or offered at any time in relation to any Shares by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise

**Second Lien Facilities Agreement** means the second lien facilities agreement dated 16 May 2014 between, among others, Emerald 2 Limited as the Parent, Emerald 3 Limited as the Borrower, Deutsche Bank AG, London Branch as agent and the Security Agent.

**Secured Debt Documents** has the meaning given to it in the Intercreditor Agreement.

**Secured Obligations** has the meaning given to it in the Intercreditor Agreement

**Secured Parties** has the meaning given to it in the Intercreditor Agreement.

**Security Assets** means all assets of each Mortgagor the subject of any security created by this Deed

**Security Interest** 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 Period** means the period beginning on the date of this Deed and ending on the "Final Discharge Date" as defined in the Intercreditor Agreement

**Senior Facilities Agreement** means the senior facilities agreement dated 16 May 2014 between, among others, Emerald 2 Limited as the Parent, the Original Borrowers (as defined therein), HSBC Bank Plc as agent and the Security Agent

**Shares** means all of the shares held by a Mortgagor in the issued share capital of the Mortgaged Company from time to time, including as at the date of this Deed, the shares of the Mortgaged Company as set out in Schedule 2 (Shares)

## **1.2 Construction**

- (a) Capitalised terms defined in the Intercreditor Agreement have, unless expressly defined in this Deed, the same meaning in this Deed
- (b) The provisions of clause 1.2 (Construction) of the Intercreditor Agreement apply to this Deed as though they were set out in full in this Deed, except that references to the Intercreditor Agreement will be construed as references to this Deed
- (c) (i) A **Secured Debt Document** or any other agreement or instrument includes (without prejudice to any prohibition on amendments) any amendment to that Secured Debt Document or other agreement or instrument, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility,



- (ii) the term **this Security** means any security created by this Deed, and
- (iii) **assets** includes present and future properties, revenues and rights of every description
- (d) Any covenant of a Mortgagor under this Deed (other than a payment obligation) remains in force during the Security Period.
- (e) In the context of the rights, powers, privileges, discretions and immunities conferred on the Security Agent or a Receiver, references to **charge** or **mortgage** in any provision of the Property Ordinance shall, for the purposes of this Deed, be deemed to be references to this Security and references to **mortgaged land** in any provision of the Property Ordinance shall, for the purposes of this Deed, be deemed to be references to the Security Assets
- (f) If the Security Agent considers that an amount paid to a Secured Party under a Secured Debt Document is capable of being avoided or otherwise set aside on the liquidation or provisional supervision of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed
- (g) Unless the context otherwise requires, a reference to a Security Asset includes
  - (i) any part of that Security Asset, and
  - (ii) the proceeds of sale of that Security Asset

## 2. CREATION OF SECURITY

### 2.1 General

- (a) All the security created under this Deed
  - (i) is created in favour of the Security Agent;
  - (ii) is created over present and future assets of each Mortgagor;
  - (iii) is created by each Mortgagor as the beneficial owner of its assets, and
  - (iv) is continuing security for the payment, discharge and performance of all the Secured Obligations
- (b) If the rights of a Mortgagor under a document or in respect of any other asset cannot be secured without the consent of a party to that document or any relevant third party in respect of such other asset
  - (i) that Mortgagor must notify the Security Agent promptly,
  - (ii) this Security will secure all amounts which that Mortgagor may receive, or has received, under that document or in respect of that other asset, but will exclude the document or that other asset itself,
  - (iii) unless the Security Agent otherwise requires, that Mortgagor must use reasonable endeavours to obtain the consent of the relevant party to that document or, as the case may be, the relevant third party in respect of that other asset, being secured under this Deed as soon as practicable; and

- (iv) the relevant Mortgagor must promptly supply to the Security Agent a copy of the consent obtained by it
- (c) The Security Agent holds the benefit of this Deed on trust for the Secured Parties
- (d) The fact that no or incomplete details of any Security Asset are included in this Deed does not affect the validity or enforceability of this Security

## **2.2 Security**

Each Mortgagor mortgages and agrees to mortgage, by way of a first mortgage

- (a) all its Shares, and
- (b) (to the extent that they are not the subject of a mortgage under sub-paragraph (a) above) all its interest in the Related Rights

## **3. FURTHER ASSURANCE**

Each Mortgagor will, at its own expense, promptly following request by the Security Agent, execute such deeds and other agreements and otherwise take whatever action the Security Agent may require

- (a) to perfect and/or protect the security created (or intended to be created) by this Deed,
- (b) to facilitate the realisation or enforcement of such security; and/or
- (c) to facilitate the exercise of any of the Security Agent's rights, powers or discretions under this Deed,

including the execution of instruments of transfer, proxies, notices, particulars, forms or other documents required to be noted, filed or submitted for registration in the Mortgagors' registers (including registers of mortgages, charges and other Securities)

## **4. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

No Mortgagor may:

- (a) create or agree to create or permit to subsist any Security Interest (other than any Security Interest arising by operation of law) over all or any part of the Security Assets,
- (b) sell, transfer, lease out, lend or otherwise dispose of all or any part of the Security Assets or the right to receive or to be paid the proceeds arising on the disposal of the same, or agree or attempt to do so, or
- (c) dispose of the equity of redemption in respect of all or any part of the Security Assets,

except as permitted by the Secured Debt Documents or with the prior consent of the Security Agent.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Matters represented**

On the date of this Deed, each Mortgagor represents and warrants to the Security Agent that

- (a) it is the legal and beneficial owner of the Shares identified against its name in Schedule 2 (Shares),
- (b) the Shares are issued and fully paid up in cash and are free from all Security, save as created under or permitted by the Senior Debt Documents,
- (c) the Shares are not liable to any call, assessment or demand of any kind and the Mortgaged Company has not granted any right or option whatsoever to call for the issue of any further shares in the Mortgaged Company in favour of any third party,
- (d) it has not registered as a non-Hong Kong company with the Companies Registry of Hong Kong whether under its name of incorporation or any other name

## **5.2 Repetition**

The Mortgagors shall be deemed to repeat each of the representations and warranties in clause 5.1 (Matters represented) by reference to the facts and circumstances then existing on each date during the Security Period.

## **6. UNDERTAKINGS**

### **6.1 Duration of undertakings**

Each Mortgagor undertakes to the Security Agent in the terms of this Clause 6 from the date of this Deed and for so long as any security constituted by this Deed remains in force

### **6.2 Title documents**

- (a) Upon the execution of this Deed, each Mortgagor must deliver to the Security Agent, or as the Security Agent may direct:
  - (i) all certificates and other documents of title or evidence of ownership in relation to any of its Security Assets;
  - (ii) all corresponding instruments of transfer and bought and sold notes (undated and signed in blank) in respect of its Shares duly signed by or on behalf of that Mortgagor and other documents which may be requested by the Security Agent in order to enable the Security Agent or its nominees to be registered as the owner or otherwise obtain legal title to any of its Security Asset,
  - (iii) signed (but undated) letters of resignation from each director and the secretary of the Mortgaged Company substantially in the form of Schedule 3 (Form of Resignation Letter),
  - (iv) a signed (but undated) resolution of all the directors of the Mortgaged Company substantially in the form of Schedule 4 (Form of Written Resolution of Directors) approving the resignation of the directors and the secretary and the appointment of persons nominated by the Security Agent as directors and secretary of the Mortgaged Company; and
  - (v) signed (and dated) letters of authorisation from each director and the secretary of the Mortgaged Company substantially in the form of Schedule 5 (Form of Authorisation Letter) authorising the Security Agent or any of its officers to complete, date and put into effect the relevant letters of resignation referred to in sub-paragraph (iii) above and the relevant resolutions of the directors referred to in sub-paragraph (iv) above.

- (b) Immediately after any right, money or property (including any share, stock, debenture, bond or other securities or investments) becomes a Security Asset, the relevant Mortgagor must deliver to the Security Agent (or as the Security Agent may direct) all documents referred to in sub-paragraphs (a)(i) and (a)(ii) above as if the references to the Security Asset in those sub-paragraphs were references to such right, money or property
- (c) Forthwith after the appointment of any person as a director or the secretary of the Mortgaged Company, each Mortgagor must procure the delivery to the Security Agent of the documents referred to in sub-paragraphs (a)(iii) to (a)(v) above signed by the relevant person
- (d) After this Security has become enforceable
  - (i) the Security Agent shall have the right to complete, date and put into effect the documents referred to in sub-paragraphs (a)(i), (a)(iii) and (a)(iv) above and to appoint such persons as the Security Agent shall think fit as directors and secretary of the Mortgaged Company,
  - (ii) each Mortgagor shall procure that the transfer of the Shares contemplated in sub-paragraph (a)(ii) is duly registered in the books of the Mortgaged Company; and
  - (iii) each Mortgagor shall procure that new share certificates in respect thereof in the names of the Security Agent and/or its nominee(s) and/or such other person(s) are issued and delivered to the Security Agent or any Receiver

### **6.3 General undertakings**

Each Mortgagor undertakes to the Security Agent

- (a) to procure that the Mortgaged Company does not issue, allot or grant any further shares, warrants or other securities or rights without the consent of the Security Agent or its nominee(s) (in which event the further shares, warrants or other securities rights will be held on the terms of this Deed and to form part of the Security Assets);
- (b) to procure that the Mortgaged Company does not vary the rights attaching to the Security Assets, except with the prior written consent of the Security Agent;
- (c) to procure that the Common Seal and the Corporate Books of the Hong Kong Company, including the Share Certificate Book, Minute Books, Register of Directors, Register of Members, Register of Transfers and Register of Charges are held to the order of the Security Agent and that the same are delivered to the Security Agent, on demand by the Security Agent at any time after the occurrence of a Declared Default, and to procure that the Security Agent may inspect all or any of the same at any time by prior appointment with the Mortgaged Company, and
- (d) at all times to comply in all respects with any law or regulation and any conditions of any Authorisation relating to this Deed

### **6.4 Amendments to constitutional documents**

Each Mortgagor undertakes to the Security Agent to procure that there are made to the Memorandum and Articles of Association of the Mortgaged Company such amendments as the Security Agent may reasonably require for the purposes of enforcing this Deed, but otherwise to procure that no other amendment is made or permitted to be made to the Mortgaged Company's Memorandum and Articles of Association

## **6.5 Calls**

Each Mortgagor undertakes to the Security Agent

- (a) during the continuance of this Deed, to punctually to pay, or to procure the punctual payment of, all calls, instalments and other payments that may become due in respect of the Security Assets and, if it fails to do so, the Security Agent may, in its absolute discretion, make such payments, and
- (b) (i) to pay interest to the Security Agent (both before and after judgment) on amounts expended by the Security Agent pursuant to this clause 6.5 from the date of payment until repaid in full at the rate and in the manner specified in clause 14.3 (Default Interest) of the Senior Facilities Agreement; (ii) to repay all such amounts, together with all accrued interest, on demand by the Security Agent, and (iii) that pending repayment, all such amounts and all interest accrued thereon shall form part of the Secured Obligations and be charged on and secured by the Security Assets

## **6.6 Voting rights**

- (a) Until an Event of Default has occurred, each Mortgagor may exercise voting rights in respect of the Security Assets as it sees fit provided that it shall not exercise, or permit the exercise of, any voting rights in respect of the Security Assets in such manner as will or may, in the reasonable opinion of the Security Agent, contravene any provision of the Senior Debt Documents, adversely affect the validity or enforceability of this security or cause an Event of Default to occur
- (b) If an Event of Default has occurred and while it is continuing, the Security Agent or its nominees may (to the entire exclusion of the Mortgagors) at any time at the Security Agent's discretion exercise all voting rights in respect of the Security Assets and all the powers given to trustees by sub-sections (4) and (5) of Section 11 of the Trustee Ordinance (Cap. 29) in respect of securities subject to a trust and (without limitation) any powers or rights which may be exercised by the person or persons in whose name or names the Security Assets are registered under the terms hereof or otherwise

## **6.7 Dividends**

- (a) Any dividends, interest payments, distributions or other monies which are at any time paid on or in respect of the Security Assets prior to the occurrence of an Event of Default may be paid to the Mortgagors. All such monies paid or payable at any other time if received by either of the Mortgagors or its nominees, shall be paid over to (and pending such payment shall be held on trust for) the Security Agent.
- (b) As and when requested by the Security Agent after the occurrence of an Event of Default, each Mortgagor will, and will procure that its nominees, execute and deliver to the Security Agent dividend mandates in respect of the Security Assets

## **7. WHEN SECURITY BECOMES ENFORCEABLE**

### **7.1 Declared Default**

This Security will become immediately enforceable if a Declared Default occurs

## **7.2 Discretion**

After this Security has become enforceable, the Security Agent may in its absolute discretion enforce all or any part of this Security in any manner it sees fit

## **7.3 Powers on enforcement**

- (a) After this Security has become enforceable, the Security Agent and/or any Receiver may, without prior notice to any Mortgagor or prior Authorisation from any court or any other person, sell or otherwise dispose of all or any part of the Security Assets at the times, in the manner and on the terms it thinks fit
- (b) The power of sale and other powers conferred (or deemed by this Deed to be conferred) by the Property Ordinance, as amended by this Deed, will be immediately exercisable at any time after this Security has become enforceable
- (c) In the event of any disposal pursuant to this clause 7.3, the Security Agent or any other Secured Party may, with the consent of the other Secured Parties, itself purchase the whole or any part of the Secured Assets or rights disposed of free from any rights of redemption on the part of the Mortgagors or either of them which are hereby waived and released
- (d) After this Security has become enforceable, the Security Agent and/or any Receiver may, without prejudice to any other rights available to the Security Agent and/or the other Secured Parties in respect of the Secured Obligations or to any other Security held for or in respect of the Secured Obligations
  - (i) implement the resignations of the incumbent directors of the Mortgaged Company and appoint the Security Agent's nominees in their stead and/or, if it has not already done so, effect the transfer of the Security Assets into its name or the name of its nominees or any other persons and/or without liability on the part of the Security Agent in the event of loss, act in all respects as the beneficial owner of the Security Assets and assume the management and control of the Mortgaged Company; and/or
  - (ii) apply all dividends accruing on the Security Assets in or towards satisfaction of the Secured Obligations as provided in clause 11 (Application of proceeds), and/or
  - (iii) dispose of all or any of the Security Agent's other rights under this Deed for such consideration (whether payable or deliverable immediately or by instalments) and in such manner as the Security Agent considers appropriate

## **8. ENFORCEMENT OF SECURITY**

### **8.1 General**

Paragraph 11 of the Fourth Schedule (Powers of Mortgagee & Receiver) to the Property Ordinance (and any similar provision under other laws) does not apply to this Security

### **8.2 No claims against Security Agent or Receiver**

Except in the case of gross negligence on the part of the Security Agent, a Receiver or any other Secured Party (as the case may be), neither of the Mortgagors shall have any right or claim against the Security Agent, a Receiver or any other Secured Party and neither the Security Agent, a Receiver nor any other Secured Party shall have any liability of any nature whatsoever to any other person including the Mortgagors, the Mortgaged Company or any other Obligor in respect of any loss

arising out of any disposal of the Security Assets or the disposal or exercise of any other rights under this Deed or any part thereof, howsoever such loss may have been caused, and whether or not a better price could or might have been obtained on such disposal, by either deferring or advancing the date of such disposal or otherwise howsoever

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

Except in the case of gross negligence on the part of the Security Agent or the Receiver (as the case may be), neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

### **8.4 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities of mortgagees and receivers referred to in the Property Ordinance as if it were such a mortgagee or receiver (and so that the statutory power of sale shall be exercisable without regard to paragraph 11 of the Fourth Schedule (Powers of Mortgagee & Receiver) to the Property Ordinance)

### **8.5 Protection of third parties**

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents will be concerned to enquire

- (a) whether the Secured Obligations have become payable,
- (b) whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised,
- (c) whether any money remains due under the Secured Debt Documents, or
- (d) how any money paid to the Security Agent or to that Receiver is to be applied

### **8.6 Redemption of prior mortgages**

- (a) At any time after this Security has become enforceable, the Security Agent may
  - (i) redeem any prior Security Interest against any Security Asset, and/or
  - (ii) procure the transfer of that Security Interest to itself, and/or
  - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer, any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on each Mortgagor
- (b) Each Mortgagor must pay to the Security Agent, within three Business Days of demand, the costs and expenses incurred by the Security Agent in connection with any such redemption and/or transfer, including the payment of any principal or interest

### **8.7 Contingencies**

If this Security is enforced at a time when no amount is due under the Secured Debt Documents but at a time when amounts may or will become due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account

## **9. RECEIVER**

### **9.1 Appointment of Receiver**

- (a) The Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if
  - (i) this Security has become enforceable, or
  - (ii) a Mortgagor so requests the Security Agent in writing at any time
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under its hand

### **9.2 Removal**

The Security Agent may by writing under its hand remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated

### **9.3 Remuneration**

The Security Agent may fix the remuneration of any Receiver appointed by it acting reasonably. The relevant Mortgagor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of any Receiver

### **9.4 Agent of each Mortgagor**

- (a) A Receiver will be deemed to be the agent of each Mortgagor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Property Ordinance. Each Mortgagor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver
- (b) No Secured Party will incur any liability (either to a Mortgagor or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **9.5 Relationship with Security Agent**

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Security Agent in relation to any Security Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver

## **10. POWERS OF RECEIVER**

### **10.1 General**

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred (or deemed by this Deed to be conferred) on it by any law. This includes all the rights, powers and discretions conferred on a receiver under the Property Ordinance
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.



## **10.2 Possession**

A Receiver may take immediate possession of, get in and collect any Security Asset and, without prejudice to the foregoing, cause to be registered all or any part of the Security Assets in its own name or in the name of its nominee(s) or in the name of any purchaser(s) thereof

## **10.3 Employees**

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, employees, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit
- (b) A Receiver may discharge any person appointed by any Mortgagor

## **10.4 Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose related to the realisation of this Security and the discharge of the Secured Obligations which he thinks fit

## **10.5 Sale of assets**

- (a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit

## **10.6 Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of any Mortgagor or relating in any way to any Security Asset

## **10.7 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

## **10.8 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset

## **10.9 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

## **10.10 Covenants, guarantees and indemnities**

A Receiver may enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit, make all payments needed to effect, maintain or satisfy

such obligations or liabilities and use the company seal(s) (if any) of any Mortgagor for any purpose related to the realisation of this Security and the discharge of the Secured Obligations

#### **10.11 Acquisitions**

A Receiver may purchase, lease, hire or otherwise acquire any assets or rights of any description that he, in his absolute discretion, considers necessary or desirable for the improvement or realisation of the whole or any part of the Security Assets or otherwise for the benefit of the whole or any part of the Security Assets

#### **10.12 Protection of assets**

A Receiver may effect any repair or insurance and do any other act which any Mortgagor might do in the ordinary conduct of its business to protect, preserve, maintain, manage or improve any Security Asset as he thinks fit

#### **10.13 Other powers**

A Receiver may

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law,
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset, and
- (c) use the name of any Mortgagor for any of the above purposes

### **11. APPLICATION OF PROCEEDS**

- (a) Any moneys received by the Security Agent or any Receiver after this Security has become enforceable must be applied in accordance with clause 17 (Application of Proceeds) of the Intercreditor Agreement
- (b) This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of any Secured Party to recover any shortfall from any Mortgagor.

### **12. EXPENSES AND INDEMNITY**

#### **12.1 Initial expenses**

Each Mortgagor shall procure that the Parent will within three Business Days of demand pay to each of the Security Agent, the other Secured Parties and any Receiver the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with

- (a) the negotiation, preparation, execution, completion and perfection of this Deed, and all documents, matters and things referred to in, or incidental to this Deed,
- (b) any amendment, waiver or consent or suspension of rights (or proposal for any of the same) relating to this Deed (and documents, matters or things referred to in this Deed), and
- (c) the investigation of any event which it reasonably believes is a Default.

## **12.2 Enforcement expenses**

Each Mortgagor shall procure that the Parent will within three Business Days of demand pay to each of the Security Agent, the other Secured Parties and any Receiver the amount of all costs and expenses (including legal fees and other out-of-pocket expenses and any value added tax or other similar tax thereon) reasonably incurred by any of them in connection with the preservation, enforcement or attempted preservation or enforcement of any of their rights under this Deed (and any documents referred to in this Deed) or any of the Security Assets and any proceedings instructed by or against the Security Agent and any Secured Party as a consequence of taking or holding the Transaction Security

## **12.3 No double counting of Security Agent's costs**

There shall be no double counting in respect of the same matter or circumstance as between any obligation to reimburse or pay fees to the Security Agent under this Deed and any similar or equivalent provision in the Secured Debt Documents

## **13. DELEGATION**

### **13.1 Power of Attorney**

The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed

### **13.2 Terms**

Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent or any Receiver may think fit.

### **13.3 Liability**

Neither the Security Agent nor any Receiver will be in any way liable or responsible to any Mortgagor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate

## **14. POWER OF ATTORNEY**

Each Mortgagor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of its delegates or sub-delegates to be its attorney to take any action which that Mortgagor is obliged to take under this Deed. Each Mortgagor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause

## **15. MISCELLANEOUS**

### **15.1 Covenant to pay**

Each Mortgagor must pay or discharge the Secured Obligations in the manner provided for in the Secured Debt Documents

### **15.2 New Accounts**

- (a) If any subsequent charge or other interest affects any Security Asset, a Secured Party may open a new account with a Mortgagor

- (b) If a Secured Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest
- (c) As from that time all payments made to that Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Obligation.

### **15.3 Time deposits**

Without prejudice to any right of set-off any Secured Party may have under any other Secured Debt Document or otherwise, if any time deposit matures on any account a Mortgagor has with any Secured Party within the Security Period when

- (a) this Security has become enforceable, and
- (b) no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which that Secured Party considers appropriate.

## **16. RELEASE**

- (a) At the end of the Security Period, the Secured Parties must as soon as reasonably practicable, at the request and cost of a Mortgagor, take whatever action is necessary to release the Security Assets from this Security, including but not limited to redelivering to the Mortgagors (or to the relevant Mortgagor) the certificates and other documents of title in respect of the Security Assets or the remainder of them (if any) and taking all other steps that may be reasonably necessary to retransfer to the Mortgagors (or the relevant Mortgagor) the Security Assets or the remainder of them (if any)
- (b) If any Security Asset is sold, transferred or disposed of as permitted under and in accordance with the Secured Debt Documents, the Security Agent shall, at the cost of the relevant Mortgagor, take whatever action is necessary to release that Security Asset from this Security
- (c) For the purpose of any release of a Security Asset from this Security, the execution of a document evidencing such release by the Security Agent shall be a good and valid release of that Security Asset from this Security without the need for any of the other Secured Parties to be joined as a party thereto.
- (d) Any release in relation to a Mortgagor will be conditional upon no security or payment to the Security Agent by or on behalf of that Mortgagor and/or any other Obligor being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws of general application and will in those circumstances be void.

## **17. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under the Secured Debt Documents will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

## **18. CHANGES TO THE PARTIES**

### **18.1 Mortgagors**

No Mortgagor may assign any of its rights or transfer any of its rights or obligations under this Deed

### **18.2 The Secured Parties**

Any Secured Party may assign or otherwise dispose of all or any of its rights under this Deed in accordance with the provisions contained in the Intercreditor Agreement.

## **19. COUNTERPARTS**

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

## **20. GOVERNING LAW**

This Deed is governed by Hong Kong law.

## **21. ENFORCEMENT**

### **21.1 Jurisdiction**

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed) (a **Dispute**).
- (b) The Parties agree that the Hong Kong courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary
- (c) This Clause 21.1 is for the benefit of the Secured Parties only. As a result, to the extent allowed by law
  - (i) no Secured Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction, and
  - (ii) the Secured Parties may take concurrent proceedings in any number of jurisdictions

### **21.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Mortgagor:
  - (i) irrevocably appoints the Mortgaged Company as its agent under this Deed for service of process in relation to any proceedings before the Hong Kong courts in connection with this Deed, and
  - (ii) agrees that failure by a process agent to notify each Mortgagor of the process will not invalidate the proceedings concerned
- (b) If any person appointed as process agent under this Clause 21.2 is unable for any reason so to act, the Chargor must immediately (and in any event within 10 days of the event taking place) appoint another agent on terms acceptable to the Security Agent. Failing this, the Security Agent may appoint another process agent for this purpose.

### **21.3 Dutch Mortgagor**

If a Mortgagor which is incorporated under the laws of the Netherlands is represented by an attorney in connection with the signing and/or execution of this Deed, it is hereby expressly acknowledged and accepted by the other Parties that the existence and extent of that attorney's authority and the effects of that attorney's exercise or purported exercise of his authority shall be governed by the laws of the Netherlands

### **21.4 Waiver of immunity**

Each Mortgagor irrevocably and unconditionally

- (a) agrees not to claim any immunity from proceedings brought by a Secured Party against it in relation to this Deed and to ensure that no such claim is made on its behalf,
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings, and
- (c) waives all rights of immunity in respect of it or its assets

**THIS DEED** has been executed and delivered as a deed on the date stated at the beginning of this Deed

**SCHEDULE 1**  
**MORTGAGORS**

<b>Name</b>	<b>Jurisdiction of Incorporation</b>	<b>Registration Number (or equivalent, if any)</b>
ERM HOLDINGS B V.	Netherlands	30156416
ERM LIMITED	England and Wales	03128071

**SCHEDULE 2****SHARES**

<b>Mortgagor</b>	<b>Mortgaged Company</b>	<b>Class of shares held</b>	<b>Number of shares held</b>
ERM HOLDINGS B V	ERM-Hong Kong, Limited (香港環境資源管理顧問有限公司)	Ordinary	108,621
ERM LIMITED	ERM-Hong Kong, Limited (香港環境資源管理顧問有限公司)	Ordinary	32,837



### SCHEDULE 3

#### FORM OF RESIGNATION LETTER

Dated. *[to be left blank]*

The Board of Directors  
ERM-Hong Kong, Limited (香港環境資源管理顧問有限公司) (the **Company**)  
*[address of the registered office of the Mortgaged Company]*

Dear Sirs,

#### Resignation

[I/We] hereby tender [my/our] unconditional and irrevocable resignation as [director]/[secretary] of the Company with effect from the date of this letter [I/We] confirm that:

- 1 [I/we] have no claims whatsoever against the Company or any of its subsidiaries or associated companies (if any) on any account (whether for compensation, for loss of office, for accrued remuneration or for fees or otherwise howsoever); and
- 2 there is no outstanding agreement or arrangement with the Company or any of its subsidiaries or associated companies (if any) under which the Company or any of such subsidiaries or associated companies has or would have any obligation to [me/us] whether now or in the future or under which [I/we] would derive any benefit

[This letter has been executed and delivered as a deed on the date stated at the beginning of this letter ]

[SIGNED, SEALED and DELIVERED )  
as a DEED by )  
*[name of relevant director/secretary]* )  
in the presence of )



Witness ]

**OR**

[SEALED with the COMMON SEAL of / )  
EXECUTED and DELIVERED as a deed by] )  
*[name of relevant corporate director/secretary]* )  
and signed by )  
*[name of two directors or one director* )  
*and the secretary of the relevant* )  
*corporate director/secretary]* )  
in the presence of )

Witness ]

## **SCHEDULE 4**

### **FORM OF WRITTEN RESOLUTION OF DIRECTORS**

ERM-Hong Kong, Limited (香港環境資源管理顧問有限公司) (the **Company**)

**WRITTEN RESOLUTION OF ALL THE DIRECTORS** made pursuant to the Articles of Association of the Company

#### **CHANGES IN DIRECTORS**

IT IS RESOLVED that the following persons be appointed additional directors of the Company with immediate effect

*[to be left blank]*

IT IS RESOLVED that the resignation of the following persons as directors of the Company be accepted with immediate effect

*[to be left blank]*

#### **CHANGES IN SECRETARY**

IT IS RESOLVED that the following person be appointed secretary of the Company with immediate effect

*[to be left blank]*

IT IS RESOLVED that the resignation of the following person as secretary of the Company be accepted with immediate effect

*[to be left blank]*

#### **COMPANIES REGISTRY**

IT IS RESOLVED that the above changes in directors and secretary of the Company be reported to the Companies Registry on the forms specified by the Companies Registry as soon as possible and for this purpose, any one director or the new secretary of the Company be authorised to sign such forms

---

*[all the directors of the Mortgaged Company to state their names and sign]*

Date. *[to be left blank]*

**SCHEDULE 5**  
**FORM OF AUTHORISATION LETTER**

[Date]

To **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as Security Agent (the **Security Agent**)

Dear Sirs,

**Share Mortgage dated [●] between ERM Holdings B.V., ERM Limited and the Security Agent (the Share Mortgage)**

[I/We] irrevocably authorise you or any of your officers to complete, date and put into effect

- 1 the attached resignation letter signed by [me/us];
2. the attached resolution signed by [me/us]\*, and
- 3 any other document signed by [me/us] and delivered pursuant to the Share Mortgage,

when the security constituted by the Share Mortgage becomes enforceable in accordance with the provisions of the Share Mortgage

[This letter has been executed and delivered as a deed on the date stated at the beginning of this letter.]

**[SIGNED, SEALED and DELIVERED** )  
as a **DEED** by )  
[*name of relevant director/secretary*] )  
in the presence of )



Witness ]

**OR**

**[SEALED with the COMMON SEAL of /** )  
**EXECUTED and DELIVERED as a deed by]** )  
[*name of relevant corporate director/secretary*] )  
and signed by )  
[*name of two directors or one director* )  
*and the secretary of the relevant* )  
*corporate director/secretary*] )  
in the presence of )

Witness ]

[*Note \* not applicable to the letter issued by the secretary*]

## SIGNATORIES

### Mortgagors

**SIGNED, SEALED and DELIVERED**  
as a deed by

acting for and on behalf of  
**ERM Holdings B.V.**

in the presence of.

Witness signature.

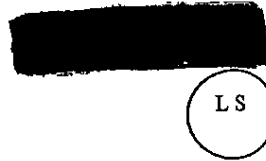
Witness name:

Witness address:

KIRSHIN PUFFE

Dickson Minto WS  
Broadgate Tower  
20 Primrose Street  
London EC2A 2EW

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)  
)  
)  
)



**SIGNED, SEALED and DELIVERED**  
as a deed by

acting for and on behalf of  
**ERM LIMITED**

in the presence of

Witness signature: [REDACTED]

Witness name. KIRSTIN FYFE

Witness address:

Dickson Minto W S  
Broadgate Tower  
20 Primrose Street  
London EC2A 2EW

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[REDACTED]

LS

**Security Agent**

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

By:

