



**Registration of a Charge**

Company Name: **ERM LIMITED**

Company Number: **03128071**



Received for filing in Electronic Format on the: **29/12/2021**

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**Details of Charge**

Date of creation: **23/12/2021**

Charge code: **0312 8071 0023**

Persons entitled: **RBC EUROPE LIMITED**

Brief description: **N/A**

**Contains fixed charge(s).**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **CAROLYN HO**



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

Company number: 3128071

Charge code: 0312 8071 0023

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2021 and created by ERM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th December 2021 .

Given at Companies House, Cardiff on 4th January 2022

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



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

**EXECUTION VERSION**

**CONFIRMATORY SECOND LIEN HONG KONG SHARE  
MORTGAGE**

**DATED** 23 DECEMBER \_\_\_\_\_ **2021**

**between**

**ERM LIMITED  
as Mortgagor**

**and**

**RBC EUROPE LIMITED  
as Second Lien Collateral Agent**

**ALLEN & OVERY**

**Allen & Overy**

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**THIS DEED** is dated 23 December 2021 and made

**BETWEEN:**

- (1) **ERM LIMITED**, a company incorporated under the laws of England and Wales with company number 03128071 as mortgagor (the **Mortgagor**); and
- (2) **RBC EUROPE LIMITED** (the **Second Lien Collateral Agent**) as security agent and trustee for the Secured Parties (as defined in the Second Lien Credit Agreement defined below).

**BACKGROUND:**

- (A) The Parties refer to a second lien credit agreement dated 12 July 2019, between, amongst others, Holdings, Eagle 4 Limited as borrower, RBC Europe Limited as administrative agent, the Second Lien Collateral Agent as collateral agent, the lenders from time to time party thereto and the other parties from time to time party thereto (the **Original Second Lien Credit Agreement**).
- (B) Pursuant to the Second Lien Share Mortgage (as defined below), the Mortgagor created a Lien over certain of the assets and undertakings of the Mortgagor as security for the Secured Obligations (as defined in the Second Lien Share Mortgage).
- (C) Holdings and the Second Lien Collateral Agent, among others, have entered into the first amendment to second lien credit agreement dated 15 June 2021 in connection with the Original Second Lien Credit Agreement (the **Amendment Agreement**).
- (D) The Mortgagor enters into this Deed in connection with the Second Lien Credit Agreement (as defined below), the Guaranty, any applicable Intercreditor Agreement and the Amendment Agreement.
- (E) The Mortgagor and the Second Lien Collateral Agent consider that the Lien created by the Mortgagor under the Second Lien Share Mortgage secures payment of the Secured Obligations, but enter into this Deed in case it does not.
- (F) This Deed is supplemental to the Second Lien Share Mortgage.
- (G) 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:

**Acceleration Action** has the meaning given to such term in the applicable Intercreditor Agreement.

**Amendment Agreement** has the meaning given to it in Recital (C).

**Confirmatory First Lien Share Mortgage** means the confirmatory share mortgage dated on or about the date of this Deed between the Mortgagor and HSBC Corporate Trustee Company (UK) Limited as first lien collateral agent in respect of the shares held by the Mortgagor in the Mortgaged Company from time to time.

**Declared Default** means the occurrence of an Acceleration Action with respect to the Secured Obligations.

**Effective Date** has the meaning given to such term in the Amendment Agreement.

**Final Discharge Date** has the meaning ascribed to the term “Termination Date” in the Second Lien Credit Agreement.

**First Lien Share Mortgage** means, collectively, the first lien share mortgage dated 10 October 2019 between the Mortgagor and HSBC Corporate Trustee Company (UK) Limited as first lien collateral agent and the new first lien share mortgage dated 23 December 2019 between the Mortgagor and HSBC Corporate Trustee Company (UK) Limited as first lien collateral agent, in each case, in respect of the shares held by the Mortgagor in the Mortgaged Company from time to time.

**Holdings** means Emerald 2 Limited, a private, limited company incorporated in England and Wales with registered number 07551799.

**Mortgaged Company** means ERM-Hong Kong, Limited 香港環境資源管理顧問有限公司, a company incorporated under the laws of Hong Kong with company number 0415939.

**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 Second Lien Collateral Agent so specifies in the relevant appointment) a receiver, in each case, appointed under this Deed.

**Related Rights** means, in relation to any Share:

- (a) any dividend, interest or other distribution paid or payable;
- (b) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- (c) any right against any applicable clearance system; and
- (d) any right under any applicable custodian or other agreement.

**Second Lien Credit Agreement** means the Original Second Lien Credit Agreement, as amended, restated, amended and restated, extended, supplemented and/or otherwise modified from time to time, including (from the Effective Date) as amended by the Amendment Agreement.

**Second Lien Share Mortgage** means, collectively, the second lien share mortgage dated 10 October 2019 between the Mortgagor and the Second Lien Collateral Agent and the new second lien share mortgage dated 23 December 2019 between the Mortgagor and the Second Lien Collateral Agent, in each case, in respect of the Shares.

**Secured Obligations** means (i) the “Obligations” as defined in the Second Lien Credit Agreement, and (ii) the “Guaranteed Obligations” as defined in the Guaranty, including for the avoidance of doubt, those obligations and liabilities as they are amended by the Amendment Agreement and those obligations and liabilities under the Amendment Agreement.

**Security Asset** means any asset of the Mortgagor which is, or is expressed to be, subject to any Lien created by this Deed.

**Security Period** means the period beginning on the date of this Deed and ending on the Final Discharge Date.

**Shares** means all of the shares held by the Mortgagor in 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 1 (Shares).

## **1.2 Construction**

- (a) Capitalised terms defined in the Second Lien Credit Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) The rules of construction specified in Article I of the Second Lien Credit Agreement will also apply to this Deed *mutatis mutandis*.
- (c) Unless a contrary indication appears, any reference in this Deed to:
  - (i) a **clearance system** means a person whose business is or includes the provision of clearance services or security accounts, or any nominee or depositary for that person; and
  - (ii) the term **this Lien** means any Lien created by this Deed.
- (d) Any covenant of the Mortgagor under this Deed remains in force during the Security Period and is given for the benefit of each Secured Party.
- (e) In determining whether or not the Secured Obligations have been fully and finally discharged or irrevocably paid in full, the Second Lien Collateral Agent will disregard contingent liabilities (such as the risk of claw back flowing from a preference) except to the extent that the Second Lien Collateral Agent and the Mortgagor agree (in each case, acting reasonably and after taking appropriate legal advice) that there is a reasonable likelihood that those liabilities will become actual liabilities.
- (f) In the context of the rights, powers, privileges, discretions and immunities conferred on the Second Lien Collateral 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 Lien 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.
- (g) Unless the context otherwise requires, a reference to a Security Asset includes:
  - (i) any part of that Security Asset;
  - (ii) the proceeds of any disposal of that Security Asset; and
  - (iii) any present and future assets of that type.

## **1.3 Permitted transactions and permitted security**

- (a) Notwithstanding anything to the contrary in this Deed, the terms of this Deed shall not operate to prohibit or restrict, or be construed so as to prohibit or restrict, any transaction, matter or other step not prohibited by any other Loan Document.

- (b) The Lien created under this Deed is subject to any Liens not prohibited by the terms of the Loan Documents in respect of the Security Assets which is (at the time such assets become (or became) the subject of the Lien created under this Deed), or is otherwise expressed to be, prior ranking.

#### **1.4 Intercreditor Agreement**

- (a) Notwithstanding any other provision of this Deed:
- (i) the Liens and security interests granted to the Second Lien Collateral Agent pursuant to this Deed are expressly subject and subordinate to the Liens and security interests granted in favour of the Senior Priority Secured Parties (as defined in the Second Lien Intercreditor Agreement), including Liens and security interests granted to HSBC Corporate Trustee Company (UK) Limited, as First Lien Collateral Agent, pursuant to or in connection with the First Lien Credit Agreement, the First Lien Share Mortgage and the Confirmatory First Lien Share Mortgage; and
  - (ii) this Deed (including, without limitation, the exercise of any right or remedy by the Second Lien Collateral Agent under this Deed) is subject to the terms of any applicable Intercreditor Agreement. In the event of any inconsistency between this Deed and any applicable Intercreditor Agreement, the applicable Intercreditor Agreement shall prevail.
- (b) Notwithstanding any provision in this Deed or in any other Collateral Document to the contrary, the Second Lien Collateral Agent acknowledges and agrees that, prior to the First Lien Termination Date:
- (i) the Mortgagor shall not be required to take or refrain from taking any action required to be taken by the Mortgagor pursuant to this Deed or at the request of the Second Lien Collateral Agent with respect to the Security Assets if such action or inaction would be inconsistent with the terms of the Second Lien Intercreditor Agreement; and
  - (ii) the representations, warranties and covenants of the Mortgagor under this Deed shall be deemed to be modified to the extent necessary to give effect to paragraph (i) above.

#### **1.5 Increase in the Secured Obligations**

Any Loan Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended or novated, including by way of increase of the facilities or other obligations or addition of new facilities or other obligations made available under them (including, without limitation, any Incremental Indebtedness under the Second Lien Credit Agreement) or accession or retirement of the parties to these agreements but excluding any amendment or novation made contrary to any provision of any Loan Document.

#### **1.6 Third party rights**

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) (the **Third Parties Ordinance**), to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Secured Party that is not a Party may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph (b) above and the provisions of the Third Parties Ordinance.

## **1.7 Limited Recourse**

- (a) Notwithstanding any other provision of this Deed:
- (i) the recourse of the Secured Parties against the Mortgagor in respect of the Secured Obligations is limited to the rights of enforcement and recovery against the Security Assets; and
  - (ii) the Mortgagor's liabilities and obligations under this Deed are limited to, and may only be discharged from, the Security Assets (including, for the avoidance of doubt the proceeds of sale or other realisation thereof) following enforcement of the Lien granted pursuant to this Deed in accordance with Clause 9 (Enforcement of Security) of the Second Lien Share Mortgage as incorporated by reference into this Deed under Clause (the **Security Recovery Proceeds**) (and the liabilities of the Mortgagor under this Deed shall be fully extinguished upon such discharge).
- (b) The Secured Parties shall not:
- (i) have any recourse to any assets of the Mortgagor other than the Security Assets;
  - (ii) seek to recover from the Mortgagor any shortfall between the amount of the Security Recovery Proceeds and the Secured Obligations; or
  - (iii) sue or commence, join or bring any action or proceeding against the Mortgagor or apply to have the Mortgagor wound up or made subject to insolvency proceedings solely as a result of any shortfall referred to in paragraph (ii) above.

## **2. CONFIRMATION**

Notwithstanding any amendment, supplement, restatement and/or substitution made and/or to be made to the Original Second Lien Credit Agreement pursuant to the Amendment Agreement and any new Lien created pursuant to this Deed, the Mortgagor confirms to the Second Lien Collateral Agent that the Lien created under the Second Lien Share Mortgage shall continue to secure the payment, discharge and performance of all Secured Obligations and, for the avoidance of doubt, such Secured Obligations include (among other things) any obligations of the Loan Parties under or in connection with each Loan Document, including, for the avoidance of doubt, with effect from the Effective Date, those obligations and liabilities under the Loan Documents as they are amended by the Amendment Agreement.

## **3. CREATION OF SECURITY**

### **3.1 General**

- (a) Subject to Clause 1.7 (Limited Recourse), the Mortgagor covenants to pay or discharge the Secured Obligations.
- (b) All the security created under this Deed:
- (i) is created in favour of the Second Lien Collateral Agent;
  - (ii) is created over all present and future Security Assets of the Mortgagor;
  - (iii) is created by the Mortgagor as the beneficial owner of its assets; and

- (iv) is continuing security for the payment, discharge and performance of the Mortgagor's obligations under paragraph (a) above.
- (c) The Second Lien Collateral 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 inserted in Schedule 1 (Shares) does not affect the validity or enforceability of this Lien.
- (e) All the security created under this Deed:
  - (i) is created in case the security created by the Second Lien Share Mortgage does not secure all of the Secured Obligations; and
  - (ii) is created in addition to, and does not affect the security created by, the Second Lien Share Mortgage.
- (f) Where this Deed purports to create a first ranking Lien, that Lien will be a second ranking Lien ranking subject to the equivalent Lien created by the First Lien Share Mortgage, the Confirmatory First Lien Share Mortgage and the Second Lien Share Mortgage until such time as the Lien created by the First Lien Share Mortgage, the Confirmatory First Lien Share Mortgage and the Second Lien Share Mortgage ceases to have effect.

### **3.2 Shares**

The Mortgagor:

- (a) mortgages and agrees to mortgage, by way of a first legal mortgage, all the Shares; and
- (b) (to the extent that they are not the subject of a mortgage under paragraph (a) above) mortgages, charges and assigns and agrees to mortgage, charge and assign by way of a first fixed charge all its interest in its Shares and the Related Rights.

## **4. INCORPORATION**

- (a) The provisions of clause 3 (Representations) to clause 19 (Release) (inclusive) (other than paragraph (b) of clause 3.2 (Shares)) of the Second Lien Share Mortgage, are deemed to be incorporated into this Deed as if they were set out in full in this Deed, with all necessary modifications, including for the avoidance of doubt, that to the extent a capitalised term in such provisions have been expressly defined in this Deed, it shall have the same meaning as expressly defined in this Deed.
- (b) Where a document has already been provided pursuant to clause 5.1 (Deposit) of the Second Lien Share Mortgage, it shall be deemed to have been delivered under this Deed on the date of this Deed or on the date on which such document is provided under the Second Lien Share Mortgage (if such document is provided after the date of this Deed) and shall not be required to be provided under this Deed. For the avoidance of doubt, the Second Lien Collateral Agent is not obliged to return any such documents to the Mortgagor by reason only of the execution of this Deed by the Parties.

## **5. REPRESENTATIONS**

### **5.1 Representations**

The Mortgagor makes the representations and warranties set out in this Clause 5 to each Secured Party on the date of this Deed by reference to the facts and circumstances then existing.

## **5.2 Shares**

Subject to this Deed, the First Lien Share Mortgage and the Confirmatory First Lien Share Mortgage, it is the legal and beneficial owner of the Shares (save in relation to those Shares which are held by a nominee for it in which case it is the beneficial owner only of those Shares).

## **6. MISCELLANEOUS**

The Second Lien Share Mortgage will remain in full force and effect.

## **7. 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.

## **8. GOVERNING LAW**

This Deed is governed by Hong Kong law.

## **9. ENFORCEMENT**

### **9.1 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 9.1 (Jurisdiction) 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.

### **9.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Mortgagor:
  - (i) irrevocably appoints the Mortgaged Company as its agent 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 the Mortgagor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as process agent for service of process is unable for any reason so to act, the Mortgagor must immediately (and in any event within 10 days of the event taking place) appoint another agent on terms acceptable to the Second Lien Collateral Agent. Failing this, the Second Lien Collateral Agent may appoint another process agent for this purpose.

### **9.3 Waiver of immunity**

The 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 by the Mortgagor on the date stated at the beginning of this Deed.

## **SCHEDULE 1**

### **SHARES**

| <b>Mortgaged Company</b>                  | <b>Class of shares held</b> | <b>Number of shares held</b> | <b>Share certificate number</b> |
|---|-----------------------------|------------------------------|---------------------------------|
| ERM-Hong Kong, Limited 香港環境<br>資源管理顧問有限公司 | Ordinary                    | 32,837                       | 67                              |

## SIGNATORIES

# Lab 10

SIGNED, SEALED and DELIVERED  
as a deed by **ERM LIMITED**  
by Mark Pearson  
who, in accordance with the laws of  
England and Wales,  
is authorised to execute this Deed  
on its behalf

Signature of authorised signatory:

in the presence of:

Witness' Signature:

Name:

Address:

Bic Nguyen  
Exchange Court, 33 st many Ave  
EC3A 6AA

W. J. G. & J. G. W.

**Second Lien Collateral Agent**

**RBC EUROPE LIMITED**

By:



JOHNSON TSE  
AUTHORISED SIGNATORY