



**Registration of a Charge**

Company Name: **CP LOGISTICS UK BRIGHTON PROPCO LIMITED**

Company Number: **13461531**



XBIYGBUO

Received for filing in Electronic Format on the: **16/12/2022**

**Details of Charge**

Date of creation: **09/12/2022**

Charge code: **1346 1531 0001**

Persons entitled: **JPMORGAN CHASE BANK, N.A. AS SECURITY AGENT.**

Brief description: **NA**

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

**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: **CLARE BETTERIDGE, SENIOR ASSOCIATE, MAYER BROWN INTERNATIONAL LLP**



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

Company number: 13461531

Charge code: 1346 1531 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th December 2022 and created by CP LOGISTICS UK BRIGHTON PROPCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th December 2022 .

Given at Companies House, Cardiff on 20th December 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

Dated 9 December 2022

- (1) **CP LOGISTICS UK BRIGHTON PROPCO LIMITED** as Chargor
- (2) **JPMORGAN CHASE BANK, N.A.** as Security Agent

---

DEED OF CHARGE OVER ACCOUNTS

---

MAYER | BROWN

## CONTENTS

CLAUSE	PAGE
1. Definitions and Interpretation .....	1
2. Covenant to Pay .....	3
3. Charging Clause .....	3
4. Crystallisation .....	4
5. Further Assurance .....	5
6. General Undertakings .....	6
7. Charged Accounts .....	6
8. Attorney .....	7
9. Enforcement .....	7
10. Extension and Variation of Statutory Powers .....	8
11. Status, Powers, Removal and Remuneration of Receiver .....	9
12. Protection of Third Parties .....	10
13. Protection of Security Agent and Receiver .....	10
14. Application of Enforcement Proceeds .....	11
15. Protection of Security .....	11
16. Set-Off .....	14
17. Notices .....	14
18. Changes to Parties .....	14
19. Currency .....	14
20. Miscellaneous .....	15
21. Governing Law and Jurisdiction .....	15

### Schedules

1. The Charged Accounts .....	16
2. Notice of Charge .....	17

**THIS DEED** is dated 9 December 2022 and made between:

- (1) **CP LOGISTICS UK BRIGHTON PROPCO LIMITED**, a private limited company established and registered in England and Wales with registered number 13461522 and having its registered address at Tournament Court, Edgehill Drive, Warwick, Warwickshire, United Kingdom, CV34 6LG (the "**Chargor**"); and
- (2) **JPMORGAN CHASE BANK, N.A.** as security agent for the Secured Parties (the "**Security Agent**") which expression shall include any person from time to time appointed as a successor, replacement or additional trustee in relation to the interests created by this deed.

**IT IS AGREED that:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**"Account Bank"** means HSBC UK Bank plc;

**"Charged Accounts"** means the account listed in Schedule 1 (*The Charged Accounts*) operated by the Chargor with any Account Bank (as such accounts may be renumbered or redesignated from time to time), each replacement account, each sub-account relating to any of them and each additional account opened by the Chargor with the Account Bank;

**"Charged Property"** means the assets charged or assigned to the Security Agent by this deed;

**"Declared Default"** means an Event of Default which has resulted in the Agent exercising any of its rights under clause 20.20 (*Acceleration*) of the Facility Agreement;

**"Default"** means a Default under the Facility Agreement;

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Agent or a Receiver;

**"Event of Default"** means an Event of Default under the Facility Agreement;

**"Facility Agreement"** means the facility agreement made between, among others, CP Logistics UK Aylesford Propco Limited as original borrower and the Security Agent as security agent originally dated 11 August 2021 (as amended pursuant to an amendment agreement dated 19 August 2021 and amended and restated pursuant to an amendment and restatement agreement dated 5 July 2022), and to which the Chargor has acceded as an Additional Borrower on or about the date of this deed;

**"Finance Documents"** means the Finance Documents as defined in the Facility Agreement;

**"Finance Parties"** means the Finance Parties as defined in the Facility Agreement;

**"Floating Charge Asset"** means an asset for the time being comprised within the floating charge created by Clause 3.2 (*Floating Charge*) or within the fixed charge created by Clause 3.1 (*Fixed Security*) or arising on crystallisation of a floating charge whether under Clause 4 (*Crystallisation*) or otherwise.

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

**"Notice of Charge"** means a notice of assignment substantially in the form set out in Schedule 2 (*Notice of Charge*), or in such other form as may be specified by the Security Agent;

**"Receiver"** means any receiver, receiver and manager or administrative receiver appointed under this deed by the Security Agent over all or any of the Charged Property whether solely, jointly, severally or jointly and severally with any other person and includes any substitute for any of them appointed from time to time;

**"Secured Obligations"** means all obligations at any time due, owing or incurred by the Chargor to any Secured Party under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity);

**"Secured Party"** has the meaning given to it in the Facility Agreement and includes a Receiver or any Delegate; and

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

## 1.2 Construction

- (a) In this deed, unless a contrary intention appears, a reference to:
- (i) words and expressions defined in the Facility Agreement have the same meanings when used in this deed unless otherwise defined in this deed;
  - (ii) the principles of construction contained in clause 1.2 (*Construction*) of the Facility Agreement apply equally to the construction of this deed, except that references to the Facility Agreement will be construed as references to this deed;
  - (iii) the **"Chargor"**, any **"Secured Party"** or any other person shall be construed so as to include its successors in title, permitted assignees and transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (iv) a **"Finance Document"** or any other agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended, restated or replaced;
  - (v) **"including"** means including without limitation and **"includes"** and **"included"** shall be construed accordingly;

- (vi) **"losses"** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **"loss"** shall be construed accordingly; and
  - (vii) any **"Clause"** or **"Schedule"** is a reference to, respectively, a clause of and schedule to this deed and any reference to this deed includes its schedules.
- (b) Clause and Schedule headings are for ease of reference only.
  - (c) The parties intend that this document shall take effect as a deed, notwithstanding the fact that a party may only execute it under hand.

### 1.3 **Third Party Rights**

- (a) Any Receiver or Delegate will have the right to enforce the provisions of this deed which are given in its favour however the consent of any Receiver or Delegate is not required for the rescission or variation of this deed.
- (b) Subject to Clause 1.3(a), a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this deed.

## 2. **COVENANT TO PAY**

### 2.1 **Covenant to Pay**

The Chargor as primary obligor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Obligations when they fall due for payment.

## 3. **CHARGING CLAUSE**

### 3.1 **Fixed Security**

As security for the payment and discharge of the Secured Obligations, the Chargor with full title guarantee charges to the Security Agent by way of first fixed charge (which shall take effect as an equitable mortgage) the Charged Accounts, all of its rights in any credit balances on the Charged Accounts and the indebtedness represented by them and assigns absolutely and agrees to assign absolutely (subject to a proviso for reassignment on redemption) to the Security Agent all rights and benefits accruing to or rising in connection with the Charged Accounts, the credit balances on the Charged Accounts and the indebtedness represented by them, including (without limitation) all interest from time to time accrued but unpaid thereon.

### 3.2 **Floating Charge**

To the extent that the Charged Accounts are not effectively charged by any fixed charge contained in Clause 3.1 (*Fixed Security*), the Chargor, with full title guarantee, as continuing security for the payment or discharge of all Secured Obligations, charges to the Security Agent by way of floating charge all its rights, title and interest from time

to time (if any) in and to the Charged Accounts and the debt represented by any such credit balance.

### 3.3 **Priority**

- (a) Any fixed Security created by the Chargor and subsisting in favour of the Security Agent shall (save as the Security Agent may otherwise declare at or after the time of its creation) have priority over the floating charge created by Clause 3.2 (*Floating Charge*).
- (b) Any Security created in the future by the Chargor over any of the Charged Property (except in favour of the Security Agent) shall be expressed to be subject to this deed and shall rank in order of priority behind the charges created by this deed.

## 4. **CRYSTALLISATION**

### 4.1 **Crystallisation by notice**

The floating charge created by the Chargor in Clause 3.2 (*Floating Charge*) may, subject to Clause 4.5 (*Moratorium Assets*), be crystallised into a fixed charge by notice in writing given at any time by the Security Agent to the Chargor if:

- (a) there has been a Declared Default;
- (b) the Security Agent is reasonably of the view that any legal process or execution is being enforced against any Floating Charge Asset or that any Floating Charge Asset is in danger of being seized or otherwise in jeopardy; or
- (c) a circumstance envisaged by Clause 4.2 (*Automatic crystallisation*) occurs and the Security Agent in good faith considers that such crystallisation is necessary in order to protect the priority of its security.

Such crystallisation shall take effect over the Floating Charge Assets or class of assets specified in the notice. If no Floating Charge Assets are specified, it shall take effect over all Floating Charge Assets of the Chargor.

### 4.2 **Automatic crystallisation**

If, without the Security Agent's prior written consent:

- (a) the Chargor, in contravention of any Finance Document, resolves to take or takes any step to create any Security over any of the Floating Charge Assets otherwise than as permitted under the terms of the Facility Agreement;
- (b) an Event of Default under clause 20.7 (*Insolvency*) or clause 20.8 (*Insolvency proceedings*) of the Facility Agreement has occurred; or
- (c) any person levies or attempts to levy any distress, execution or other process against any of the Floating Charge Assets,



then the floating charge created by Clause 3.2 (*Floating Charge*) shall, subject to Clause 4.5 (*Moratorium Assets*), be automatically and instantly crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Asset or, in the case of Clause 4.2(c) into a fixed charge over all Floating Charge Assets of the Chargor.

#### **4.3 Future Floating Charge Assets**

Except as otherwise stated in any notice given under Clause 4.1 (*Crystallisation by notice*) or unless the crystallisation relates to all its Floating Charge Assets, prospective Floating Charge Assets acquired by the Chargor after crystallisation has occurred under Clause 4.1 (*Crystallisation by notice*) or Clause 4.2 (*Automatic crystallisation*) shall become subject to the floating charge created by Clause 3.2 (*Floating Charge*), so that the crystallisation shall be effective only as to the specific Floating Charge Assets affected by the crystallisation.

#### **4.4 Reconversion**

Any charge which has crystallised under Clause 4.1 (*Crystallisation by notice*) or Clause 4.2 (*Automatic crystallisation*) may, by notice in writing given at any time by the Security Agent to the Chargor, be reconverted into a floating charge in relation to the Charged Property specified in such notice.

#### **4.5 Moratorium Assets**

The floating charge created by the Chargor in Clause 3.2 (*Floating Charge*) may not be converted into a fixed charge on Charged Property for which a moratorium is in force if and for so long as such conversion would breach paragraph 13 and/or paragraph 43 in Schedule A1 Insolvency Act 1986.

### **5. FURTHER ASSURANCE**

#### **5.1 Further assurance**

- (a) The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this deed (which may include execution of a mortgage, charge, pledge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security created by this deed) or for the exercise of any rights, powers and remedies of the Security Agent, any Receiver or the Secured Parties provided by or pursuant to this deed or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by this deed.
- (b) The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to

be conferred on the Security Agent or the Secured Parties by or pursuant to this deed.

## **5.2 Notice of Charge**

The Chargor shall:

- (a) in respect of each Charged Account on the date of this deed, on the date of this deed; and
- (b) in respect of any Charged Account opened on a date falling after the date of this deed, within five Business Days of the opening of such Charged Account,

deliver (with a copy to the Security Agent) a Notice of Charge, duly completed, to the Account Bank and use reasonable endeavours to procure that the Account Bank acknowledges that Notice of Charge in the form attached to that Notice of Charge (or in such other form as the Security Agent may approve).

## **6. GENERAL UNDERTAKINGS**

### **6.1 Duration of Undertakings**

All of the undertakings given in this deed are given from the date of this deed and for so long as any Secured Obligation is outstanding.

### **6.2 Negative Pledge**

The Chargor undertakes to the Security Agent that it will not create or agree to create or permit to subsist any Security over all or any part of the Charged Property except as expressly permitted by and in accordance with the Facility Agreement.

### **6.3 Disposal Restrictions**

The Chargor undertakes to the Security Agent that it will not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer or otherwise dispose of all or any part of the Charged Property except as expressly permitted by and in accordance with the Facility Agreement.

### **6.4 Prejudicial Action**

The Chargor shall not do, cause or permit to be done anything which in any way may depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the Charged Property.

## **7. CHARGED ACCOUNTS**

### **7.1 Charged Accounts**

- (a) Clause 19.17 (*Collateral Account*) of the Facility Agreement contains provisions relating to the maintenance and operation of the Charged Accounts. The Chargor shall comply with those provisions.

- (b) Prior to a Declared Default but subject to the terms of the Finance Documents, the Chargor shall be entitled to make any request or demand upon the Account Bank for the withdrawal or repayment of amounts standing to the credit of the Charged Accounts.
- (c) Following the occurrence of a Declared Default, the Chargor shall not be entitled to make any request or demand upon the Account Bank for the withdrawal or repayment of any amount standing to the credit of the Charged Accounts, or otherwise apply or deal with such amounts without the prior written consent of the Security Agent.

## 8. **ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, deliver and perfect any deed, agreement or other instrument and to do any act or thing which:

- (a) the Chargor is required to do by the terms of any Finance Document; and
- (b) is for the purpose of enabling the exercise of any rights or powers conferred on the Security Agent or any Receiver by any Finance Document or by law,

and the Chargor covenants with the Security Agent and each Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

## 9. **ENFORCEMENT**

### 9.1 **Exercise of Enforcement Powers**

At any time after a Declared Default:

- (a) the security created by or pursuant to this deed is immediately enforceable;
- (b) the Security Agent may enforce all or any part of the security and take possession of and hold, sell or otherwise dispose and/or deal with all or any part of the Charged Property; and
- (c) the Security Agent may exercise the power of sale and all other rights and powers conferred by this deed or by statute (as varied or extended by this deed) on the Security Agent or on a Receiver, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Property.

### 9.2 **Appointment of Receiver**

- (a) Subject to Clause 9.2(c), if:
  - (i) a Declared Default has occurred; or
  - (ii) so requested by the Chargor,

the Security Agent may by writing under hand appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.

- (b) S109(1) LPA shall not apply to this deed.
- (c) A Receiver may not be appointed solely by reason of the obtaining of a moratorium under s1A Insolvency Act 1986 in relation to the Chargor, or anything done with a view to obtaining such a moratorium.

### 9.3 **Appropriation**

- (a) In this deed, "**financial collateral**" has the meaning given to that term in the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "Regulations").
- (b) At any time after a Declared Default, and to the extent that the provisions of the Regulations apply to all or any part of the Charged Property, the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Obligations.
- (c) The Security Agent must attribute a value to the appropriated financial collateral in a commercially reasonable manner.
- (d) Where the Security Agent exercises its rights of appropriation and the value of the financial collateral appropriated differs from the amount of the Secured Obligations, as the case may be, either:
  - (i) the Security Agent must account to the Chargor for the amount by which the value of the appropriated financial collateral exceeds the Secured Obligations; or
  - (ii) the Chargor will remain liable to the Secured Parties for any amount whereby the value of the appropriated financial collateral is less than the Secured Obligations.

## 10. **EXTENSION AND VARIATION OF STATUTORY POWERS**

### 10.1 **Statutory Powers**

The powers conferred on mortgagees, receivers or administrative receivers by statute shall apply to the security created by this deed (to the extent possible), unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers conferred by statute and those contained in this deed, those contained in this deed shall prevail.

### 10.2 **Section 101 LPA Powers**

The power of sale and other powers conferred by s101 LPA shall arise on the date of this deed and for that purpose the Secured Obligations are deemed to have fallen due on the date of this deed.

### **10.3 Restrictions Disapplied**

The restrictions on the consolidation of mortgages and on exercise of the power of sale imposed by s93 and s103 LPA respectively shall not apply to the security constituted by this deed.

## **11. STATUS, POWERS, REMOVAL AND REMUNERATION OF RECEIVER**

### **11.1 Receiver as Agent**

Each Receiver shall be the agent of the Chargor which shall be solely responsible for his or her acts or defaults, and for his or her remuneration and expenses, and be liable on any agreements or engagements made or entered into by him or her. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

### **11.2 Powers of Receiver**

Each Receiver appointed under this deed shall have all the powers conferred from time to time on receivers by the LPA and the Insolvency Act 1986 (each of which is deemed incorporated in this deed), so that the powers set out in Schedule 1 Insolvency Act 1986 (to the extent relevant) shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the Chargor, each Receiver shall have power to:

- (a) enter into or cancel any contracts on any terms or conditions;
- (b) redeem any prior Security on or relating to the Charged Property and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- (c) settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to any of the Charged Property; and
- (d) do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 11.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the Chargor for all such purposes,

and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit.

### **11.3 Removal of Receiver**

The Security Agent may by notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

#### **11.4 Remuneration of Receiver**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it. S109(6) and s(8) LPA shall not apply to a Receiver appointed under this deed.

#### **11.5 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this deed (unless the document appointing such Receiver states otherwise).

### **12. PROTECTION OF THIRD PARTIES**

#### **12.1 No Obligation to Enquire**

No purchaser from, or other person dealing with, the Security Agent, any Receiver or Delegate shall be obliged or concerned to enquire whether:

- (a) the right of the Security Agent or any Receiver to exercise any of the powers conferred by this deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Obligations remain outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

#### **12.2 Receipt Conclusive**

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys or other consideration paid to or by the direction of the Security Agent or any Receiver.

### **13. PROTECTION OF SECURITY AGENT AND RECEIVER**

#### **13.1 Role of Security Agent**

The provisions set out in clause 24 (*The Security Agent*) of the Facility Agreement shall govern the rights, duties and obligations of the Security Agent under this deed.

#### **13.2 Delegation**

The Security Agent may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit. The Security Agent will not be liable or responsible to the Chargor or any other person for any losses arising from any act, default, omission or misconduct on the part of any Delegate.

### **13.3 No Liability**

Neither the Security Agent nor any Receiver or Delegate shall be liable in respect of any of the Charged Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers.

## **14. APPLICATION OF ENFORCEMENT PROCEEDS**

### **14.1 Order of Application**

Unless otherwise determined by the Agent or a receiver, all amounts should be applied in the order set out in clause 29.1 (*Order of application*) of the Facility Agreement.

### **14.2 Suspense Account**

- (a) Until the Secured Obligations are paid in full, each Secured Party may place and keep (to the extent possible and for such time as it shall determine) any recoveries or other proceeds of enforcement (whether cash or non-cash) received pursuant to this deed or otherwise on account of the Chargor's liability in respect of the Secured Obligations in a separate suspense account, without having any obligation to apply all or any part of the same in or towards the discharge of the Secured Obligations.
- (b) If the security created by this deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, a Secured Party may pay any recoveries or other proceeds of enforcement into a suspense account.

### **14.3 Security accounts**

Until the all amounts which may be or become payable in respect of the Secured Obligations have been irrevocably paid in full (and whether or not a Default has occurred) the Security Agent may, in its discretion, apply any part of the monies standing to the credit of the Charged Accounts in accordance with Clause 14.1 (*Order of Application*).

## **15. PROTECTION OF SECURITY**

### **15.1 Continuing security**

This security is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or any other matter or thing.

### **15.2 Other security**

- (a) This security is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other security or other right which the Security Agent or any other Secured Party may now or after the date of this deed hold for any of the Secured Obligations.

- (b) This security may be enforced against the Chargor without first having recourse to any other rights of the Security Agent or any other Secured Party.

### **15.3 Cumulative Powers**

- (a) The powers which this deed confers on the Security Agent, the other Secured Parties and any Receiver appointed under this deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate.
- (b) The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever.
- (c) The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

### **15.4 Amounts Avoided**

If any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or set aside on the liquidation or administration of the Chargor or otherwise, then for the purposes of this deed that amount shall not be considered to have been paid.

### **15.5 Discharge Conditional**

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or in respect of any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **15.6 Waiver of Defences**

The obligations of the Chargor under this deed will not be affected by an act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this deed (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other person;



- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **15.7 Non-competition**

Until all amounts which may be or become payable in respect of the Secured Obligations have been irrevocably paid in full and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this deed or by reason of any amounts being payable, or liability arising under this deed:

- (a) to claim any right of indemnity or contribution in respect of any payment made or other satisfaction of the Chargor's liability under this deed;
- (b) to take the benefit (whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents; and/or
- (c) to claim or prove as a creditor of any Shareholder or the CalSTRS Guarantor in competition with any Secured Party.

The Chargor shall hold any benefit, payment or distribution received by it contrary to this Clause 15.7 on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 14 (*Application of Enforcement Proceeds*).

#### **15.8 Subsequent Security - Ruling-off Accounts**

If the Security Agent or any other Secured Party receives notice of any subsequent Security or other interest affecting any of the Charged Property it may open a new account for the Chargor in its books. If it does not do so then (unless it gives express notice to the contrary to the Chargor), as from the time it receives that notice, all payments made by the Chargor to it shall (in the absence of any express appropriation to the contrary) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

#### **15.9 Redemption of Prior Charges**

The Security Agent may, at any time after a Declared Default, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

## 16. SET-OFF

- (a) Any Secured Party may set off any matured obligation due from the Chargor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) If the relevant obligation or liability of the relevant Chargor is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

## 17. NOTICES

Clause 30 (*Notices*) of the Facility Agreement shall apply to this deed.

## 18. CHANGES TO PARTIES

### 18.1 Assignment by the Security Agent

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this deed in accordance with the Finance Documents.

### 18.2 Changes to Parties

The Chargor authorises and agrees to changes to parties under clause 21 (*Changes to the Lenders*) and clause 22 (*Changes to the Borrowers*) of the Facility Agreement, and authorises the Security Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions.

## 19. CURRENCY

### 19.1 Conversion

All monies received or held by the Security Agent or any Receiver under this deed may be converted into any other currency which the Security Agent considers necessary to discharge any obligations and liabilities comprised in the Secured Obligations in that other currency at the spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received. The Security Agent shall not be liable for any rate of exchange so obtained by it.

### 19.2 No Discharge

The obligations of the Chargor to pay in the due currency under this deed shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action in relation to

the shortfall and shall be entitled to enforce the security constituted by this deed to recover that amount.

## **20. MISCELLANEOUS**

### **20.1 Certificates Conclusive**

Clause 31.2 (*Certificates and determinations*) of the Facility Agreement shall apply to this deed.

### **20.2 Invalidity of any Provision**

If any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

### **20.3 Counterparts**

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

### **20.4 Covenant to Release**

Once all the Secured Obligations have been paid in full and none of the Security Agent nor any Secured Party has any actual or contingent liability to advance further monies to, or provide further financial accommodation to any of the Obligors under the Finance Documents, the Security Agent and each Secured Party shall, at the request and cost of the Chargor, take any action which is necessary, without recourse or warranty, to release reassign or discharge (as appropriate) the Charged Property from the security constituted by this deed.

## **21. GOVERNING LAW AND JURISDICTION**

- (a) This deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed or any non-contractual obligation arising out of or in connection with this deed) (a "**Dispute**").
- (c) The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

## **EXECUTION:**

The parties have shown their acceptance of the terms of this deed by executing it, in the case of the Chargor as a deed, after the Schedules.

**SCHEDULE 1**  
**THE CHARGED ACCOUNTS**

<b>Account Holder</b>	<b>Account Bank</b>	<b>Currency</b>	<b>Account Number / IBAN / Swift Code</b>	<b>Sort Code</b>
CP Logistics UK Brighton Propco Limited	HSBC UK Bank plc	GBP	Account Number: <div style="background-color: black; width: 100px; height: 1.2em; margin: 2px 0;"></div> Account Name: CP Logistics UK Brighton Propco Limited  IBAN: <div style="background-color: black; width: 200px; height: 1.2em; margin: 2px 0;"></div> Swift Code: HBUKGB4B	40-11-60

**SCHEDULE 2  
NOTICE OF CHARGE**

*On Chargor's notepaper*

To: *[Name and address of Account Bank]*

Copy to: *[Security Agent]*

*[Date]*

Dear Sirs

**Account numbers: [●]**

We refer to the accounts numbered: [●] (each, a "**Charged Account**").

We give you notice that by a deed of charge dated [●] and entered into by us in favour of *[Name of Security Agent]* (the "**Security Holder**") we have charged the Charged Accounts, all our rights in any credit balances on the Charged Accounts (the "**Balances**") and the indebtedness represented by the Charged Accounts.

We irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary):

- (a) to disclose to the Security Holder (without any reference to or further authority from us and without any enquiry by you as to the justification for the disclosure), any information relating to the Charged Account which the Security Holder may, at any time and from time to time, request;
- (b) at any time and from time to time on receipt by you of any written instruction from the Security Holder to release any amount of the Balances and to act in accordance with that instruction (without any reference to or further authority from us and without any enquiry by you as to the justification for the instruction or the validity of the same); and
- (c) to comply with the terms of any written notice, statement or instruction in any way relating or purporting to relate to the Charged Account, the Balances or the indebtedness represented by it or them which you may receive at any time and from time to time from the Security Holder (without any reference to or further authority from us and without any enquiry by you as to the justification for the notice, statement or instruction or the validity of it),

and prior to such written instruction the Company is at liberty to operate the Charged Account in the ordinary way.

We agree that:

- (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with the Security Holder's prior written consent; and

- (ii) you are authorised to disclose any information in relation to the Charged Accounts to the [Security Agent] at the Security Holder's request.

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Security Holder at [●] marked for the attention of [●].

This letter is governed by, and shall be construed in accordance with, English law.

Yours faithfully

.....  
*[Name of Chargor]*  
**By:** *[Name of signatory]*

.....  
*[Name of Chargor]*  
**By:** *[Name of signatory]*

[On copy letter only:]

[Date]

To: *[Security Holder]* (the "**Security Holder**")

Copy to: *[Company]* (the "**Company**")

Dear Sirs

1. We acknowledge receipt from the Company of a notice dated [●] (the "**Notice**") in respect of the account(s) described in the table below (each, a "**Charged Account**" and together the "**Charged Accounts**"): *[insert table]*
2. Charged Account(s) includes each sub or ledger account of that account and any replacement accounts.
3. We understand that the Company has granted security in favour of the Security Holder over all its rights, title and interest in each Charged Account and the monies from time to time standing to their credit by way of a security agreement as listed in the table above.
4. We note that during the period:
  - (a) commencing on the date of this acknowledgement; and
  - (b) ending on the date (the "**Enforcement Date**") that we acknowledge receipt of a notice (in form and substance satisfactory to us) in the form of Schedule 1 (the "**Enforcement Notice**"),the Company is at liberty to operate each Charged Account in the ordinary way.
5. Until the Enforcement Date:
  - (a) we may operate each Charged Account in the ordinary course of banking business and pursuant to the terms and conditions applicable to such Charged Account including, without limitation:
    - (i) collecting cheques and other payment orders by any medium when accepting monies for the credit of a Charged Account;
    - (ii) honouring any payment or other instructions, notices or directions regarding a Charged Account; and
    - (iii) allowing the Company to draw cheques and make other payments and generally to withdraw funds from a Charged Account,without reference or authority from the Security Holder;
  - (b) we may act upon instructions from any authorised signatory of the Company in accordance with the terms and conditions applicable to the relevant Charged Account without reference or authority from the Security Holder;

- (c) each Charged Account shall be operated the basis of our standard terms and conditions as varied from time to time or by any other arrangement between us and the Company;
  - (d) all costs, charges and expenses for the maintenance of each Charged Account and arising under this arrangement shall be the responsibility of the Company and in the event that these are not otherwise met by the Company when they are due such expenses may be debited directly by us to the Charged Accounts;
  - (e) we may rely on any notice, instruction, direction, communication or other document or information believed by us to be genuine and correct which has been signed or communicated by the person who it purports to be signed and communicated by and we shall not be liable for the consequences;
  - (f) we have no obligation whatsoever to verify the facts or matters stated in any notice, instruction, direction, communication or other document or information received by us as true and correct, including whether the terms of any agreement between the Security Holder and the Company have been complied with or the making of any enquiry as to whether a security interest has become enforceable;
  - (g) we are not obliged to comply with any instructions received if, due to circumstances which are not within our direct control, we are unable to comply with such instructions or to comply with those instructions would breach a court order or be contrary to law or regulation;
  - (h) nothing in this acknowledgment or otherwise deems us to be a trustee or other fiduciary with respect to any Charged Account and our relationship to the Company shall be that of banker and accountholder only; and
  - (i) nothing in this acknowledgment or otherwise requires us to provide information, undertake regular reporting or provide services in relation to the operation of any Charged Account that are not currently contemplated or undertaken by us as banker for the Company.
6. To the extent that an instruction for withdrawal from any Charged Account is given which would in our opinion cause such Charged Account to be overdrawn we shall only transfer the outstanding cleared credit balance in such Charged Account.
7. We are not obliged to act in accordance with any notice, instruction, direction or communication received from the Security Holder unless:
- (a) the Security Holder delivers to us a certified true copy of a list of authorised signatories together with specimen signatures of the persons authorised by the Security Holder to give notices and instructions to us in connection with this Notice, in form and substance satisfactory to us; and
  - (b) any such notice, instruction, direction or communication are delivered to us by registered mail to each of:
    - (i) *[insert HSBC employee];*
    - (ii) *[insert HSBC employee];*



- (iii) *[insert HSBC employee]*;
  - (iv) *[insert HSBC employee]*; and
  - (v) *[insert HSBC employee]*.
8. On receipt of an Enforcement Notice, we agree with effect from the Enforcement Date to:
- (a) act on Security Holder's instructions in accordance with the terms and conditions applicable to each Charged Account and any other products or services provided by us relating to such Charged Accounts; and
  - (b) not act on any instructions received from the Company after the Enforcement Date.
9. We shall be released from any obligation owed or agreed by us under or in connection with this acknowledgment or the Notice to act on the instruction, direction or communication of the Security Holder on the earlier of:
- (a) the revocation of the instructions in the Notice (by operation of law or otherwise); or
  - (b) the date that we acknowledge receipt of a notice from the Security Holder substantially in the form set out in Schedule 2.
10. This acknowledgement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party hereto.
11. This acknowledgment (including any non-contractual obligation arising out of or in connection with it) is governed by and shall be construed in accordance with English law and the English Courts shall have exclusive jurisdiction.

Yours faithfully

*[signatory]*

For and on behalf of

**HSBC UK Bank plc**

## SCHEDULE 1

### Form of Enforcement Notice

**[ON SECURITY HOLDER LETTERHEAD]**

[Date]

To: [insert HSBC employee]

[HSBC address]

Copy to: [Company] (the "**Company**")

Dear Sirs

1. We refer to the notice of charge sent to you by us [and[/or] the Company] dated [●] (the "**Notice of Charge**") and the acknowledgment of charge sent by you to us [and the Company] dated [●] (the "**Acknowledgement of Charge**").
2. We hereby notify you that we are enforcing the security granted to us by the Company in respect of each of the Charged Accounts (as defined in the Acknowledgment of Charge).

Yours faithfully

[signatory]

For and on behalf of

[Security Holder]

## SCHEDULE 2

### Form of Release Notice

[Date]

To: [insert HSBC employee]

[HSBC Address]

Copy to: [Company] (the "**Company**")

Dear Sirs

1. We refer to the notice of charge sent to you by us [and/or] the Company] dated [●] (the "**Notice of Charge**") and the acknowledgment of charge sent by you to us [and the Company] dated [●](the "**Acknowledgement of Charge**").
2. On and with effect from [●], we, the "**Security Holder**":
  - (a) released the security created by the Company over each Charged Account (as defined in the Acknowledgment of Charge);
  - (b) reassigned to the Company absolutely all or any part of each Charged Account assigned to it.
3. The Security Holder acknowledges and confirms that it no longer has any rights or entitlements under or in connection with any Charged Account.

Yours faithfully

[signatory]

For and on behalf of

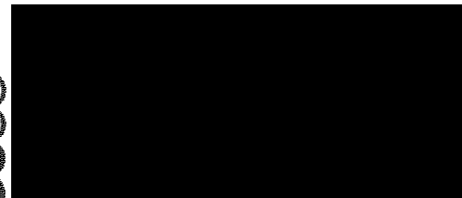
[Security Holder]

**EXECUTION of the Deed of Charge:**

**The Chargor**

SIGNED as a deed by Robert Maher,  
Director, and Nathan Rydom, Director,  
duly authorised for and on behalf of  
**CP LOGISTICS UK BRIGHTON**  
**PROPCO LIMITED**

)  
)  
)  
)  
)  
)



**The Security Agent**

Signed by

for and on behalf of  
**JPMORGAN CHASE BANK, N.A.**



)  
)  
)  
)

**Jeffrey Davidovitch**  
Managing Director