

DATED:

2022

QUANTA FINANCE LIMITED ITS SUCCESSORS AND/OR ASSIGNS

-and-

MDN PROPERTIES PENSION SCHEME

-and-

XP 4 DEVELOPMENTS LIMITED

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DEED OF PRIORITY

relating to XP 4 Developments Limited

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**Brabners**

55 King Street  
Manchester  
M2 4LQ

Ref: HBS/101815.9  
Tel: 0161 836 8800

## CONTENTS

Clause

*No table of contents entries found.*

THIS DEED is dated

2022

## PARTIES

- (1) **Quanta Finance Limited** (company registration number - 13047169) whose registered office is at Lower Ground Floor, One George Yard, London, United Kingdom, EC3V 9DF (**Senior Creditor**).
- (2) **MDN Properties Pension Scheme** of c/o 25 Long Grove, Seer Green, Beaconsfield, Buckinghamshire, HP9 2YN (**Junior Creditor**), acting by Mr Matthew Norris as its trustee.
- (3) **XP 4 Developments Limited** (company registration number – 13517038) whose registered office is at 52b Bernard Street, St Albans, Hertfordshire AL3 5QN (**Company**).

## BACKGROUND

- (A) The Senior Creditor has agreed to provide, or has provided, the Senior Debt to the Company and the Company has entered into, or will enter into, the Senior Security Documents to secure the Senior Debt.
- (B) The Junior Creditor has agreed to provide, or has provided, the Junior Debt to the Company and the Company has entered into, or will enter into, the Junior Security Documents to secure the Junior Debt.
- (C) The Senior Creditor and the Junior Creditor have agreed that the priority of the Senior Security Interests and the Junior Security Interests for the Senior Debt and the Junior Debt respectively shall be as set out in this deed.
- (D) The Company has agreed to enter into this deed to acknowledge its terms and to give certain covenants to the Creditors.

## AGREED TERMS

### 1. Definitions and Interpretation

#### 1.1 Definitions

The following definitions apply in this deed.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Creditor:** the Senior Creditor or the Junior Creditor.

**Debt Document:** any Junior Debt Document or any Senior Debt Document.

**Enforcement Action:** the taking of any action by either of the Creditors to:

- (a) demand repayment or payment of any of the Liabilities secured by the Security constituted by any of its Security Documents;
- (b) enforce any of that Security; or
- (c) take possession of any asset subject to any Security.

**Enforcement Date:** the Business Day following the date on which a Creditor receives written notice from the other Creditor that the other Creditor has taken

Enforcement Action.

<b>Junior Debt:</b>	all Liabilities which are or may become payable or owing by the Company to the Junior Creditor under the Junior Debt Documents which are secured by any Junior Security Interest.
<b>Junior Debt Discharge Date:</b>	the date that the Junior Creditor is satisfied that all of Junior Debt has been repaid and discharged and all commitments of the Junior Creditor to lend any Junior Debt to the Borrower have been cancelled.
<b>Junior Debt Document:</b>	any document referred to in Part 1 of Schedule 2 and any Junior Security Document.
<b>Junior Security Document:</b>	any document referred to in Part 2 of Schedule 2, any document under which Security is taken pursuant thereto and any other document under which Security is created, whether at the date of this deed or at any later date, which secures any of the Junior Debt and is permitted to be taken pursuant to this deed.
<b>Junior Security Interest:</b>	any Security in favour of the Junior Creditor created by a Junior Security Document.
<b>Liabilities:</b>	all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity.
<b>Receiver:</b>	a receiver, receiver and manager or administrative receiver appointed by either Creditor pursuant to the provisions of its Security Documents.
<b>Security:</b>	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
<b>Security Document:</b>	any Senior Security Document or any Junior Security Document.
<b>Senior Debt:</b>	all Liabilities which are or may become payable or owing by the Company to the Senior Creditor under the Senior Debt Documents which are secured by any Senior Security Interest.
<b>Senior Debt Discharge Date:</b>	the date that the Senior Creditor is satisfied that all of Senior Debt has been repaid and discharged and all commitments of the Senior Creditor to lend any Senior Debt to the Borrower have been cancelled.
<b>Senior Debt Document:</b>	any document referred to in Part 1 of Schedule 1 and any Senior Security Document.
<b>Senior Non-Priority Debt:</b>	any Senior Debt that is not part of the Senior Priority Debt.
<b>Senior Priority Debt:</b>	<ul style="list-style-type: none"><li>(a) all Liabilities which are or may become payable or owing by the Company to the Senior Creditor under the Senior Debt Documents which are secured by any Senior Security Interest; and</li><li>(b) all interest on or attributable to the sums referred to in paragraph (a) from time to time due pursuant to the Senior Debt Documents; and</li></ul>

- (c) all costs and fees pursuant to the Senior Debt Documents incurred or paid by the Senior Creditor in recovering the sums referred to in paragraphs (a) or (b).

**Senior Priority Debt Discharge Date:** the date that the Senior Creditor is satisfied that all of Senior Priority Debt has been repaid and discharged and all commitments of the Senior Creditor to lend any Senior Priority Debt to the Borrower have been cancelled.

**Senior Security Document:** any document referred to in Part 2 of Schedule 1, any document under which Security is taken pursuant thereto and any other document under which Security is created, whether at the date of this deed or at any later date, which secures any of the Senior Debt.

**Senior Security Interest:** any Security in favour of the Senior Creditor created by a Senior Security Document.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax but not e-mail;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;



- 1.2.12 any words following the terms **including, include, in particular, for** example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution; and
- 1.2.16 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Clawback**

If the Senior Creditor considers that an amount paid in respect of the Senior Debt is capable of being avoided or otherwise set aside on the liquidation or administration of the Company or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### **1.4 Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules,

## **2. Priority of Security**

### **2.1 Senior Creditor consent to Junior Security Interests**

The Senior Creditor:

- 2.1.1 consents to the creation or subsistence (as appropriate) of the Junior Security Interests; and
- 2.1.2 confirms that the creation or subsistence of the Junior Security Interests does not constitute a default by the Company under any of the Senior Debt Documents.

### **2.2 Junior Creditor consent to Senior Security interests**

The Junior Creditor:

- 2.2.1 consents to the creation or subsistence (as appropriate) of the Senior Security Interests; and
- 2.2.2 confirms that the creation or subsistence of the Senior Security Interests does not constitute a default by the Company under any of the Junior Debt Documents.

### **2.3 Priority**

*Subject to clause 10.1 (Application of Proceeds) each Creditor and the Company agree that:*

- 2.3.1 the Senior Security Interests rank and shall rank, to the extent of the Senior Priority Debt, in priority to the Junior Security Interests; and

the Junior Debt and Junior Security Interests are and shall be postponed to, and rank after, the Senior Security Interests to the extent of the Senior Priority Debt; and

2.3.2 the Junior Debt and Junior Security interests rank and shall rank in priority to the Senior Non-Priority Debt in accordance with clause 10.1; and

2.3.3 except as otherwise expressly permitted in this deed (or with the prior written consent of the Junior Creditor) no payments shall be made by any person in respect of the Senior Non-Priority Debt prior to the Junior Debt Discharge Date.

## **2.4 Continuing status of security**

Nothing in this deed shall affect the status of the Security Documents as continuing security, nor shall the ranking of the Security specified in clause 2.3 be affected by any act, omission, transaction, limitation, matter, thing or circumstance whatsoever which but for this provision might operate to affect the relative priorities of the Security constituted by the Security Documents, including, but not limited to:

2.4.1 the nature of any of the Security constituted by the Security Documents and the order of its execution or registration;

2.4.2 any provision contained in any of the Security Documents;

2.4.3 the respective date (or dates) on which any person received notice of the existence or creation of any Security constituted by any Security Document;

2.4.4 the respective date (or dates) on which monies may be, or have been, advanced or become owing or payable under a Debt Document or secured under a Security Document;

2.4.5 any fluctuation from time to time in the amount of Liabilities secured by a Security Document and in particular, without limitation, any reduction to nil of the Liabilities so secured;

2.4.6 the existence at any time of a credit balance on any current or other account of the Company;

2.4.7 the appointment of any liquidator, Receiver, administrator or other similar officer either in respect of the Company or over all or any part of the Company's assets; or

2.4.8 any amendment or supplement to or variation of any Debt Document.

## **2.5 Invalidity of security**

If all or any of the Senior Security Interests or Junior Security Interests:

2.5.1 are released; or

2.5.2 are or become wholly or partly invalid or unenforceable,

the Senior Creditor or Junior Creditor (respectively) shall bear the resulting loss and shall not be entitled to share in monies derived from assets over which it has no effective security.

## **2.6 No challenge to security**

Neither Creditor shall challenge or question:

2.6.1 the validity or enforceability of any Security constituted by a Security Document;

- 2.6.2 the nature of any Security constituted by a Security Document; or
- 2.6.3 without prejudice to the generality of the foregoing, whether any Security constituted by a Security Document is fixed or floating.

### **3. Company Covenants**

#### **3.1** Prior to the Senior Priority Debt Discharge Date, the Company covenants with the Senior Creditor that it shall not:

- 3.1.1 create, or allow to subsist, any Security (other than a Junior Security Interest) over any of its assets, or any guarantee, for or in respect of any of the Junior Debt or in respect of a loan or credit provided to the Junior Creditor by another person unless:

- 3.1.1.1 the benefit of that Security or guarantee is conferred on the Senior Creditor at, or before, the time the Security or guarantee is created in such manner and such form as the Senior Creditor may reasonably require; or

- 3.1.1.2 the Senior Creditor has declined to take the benefit of that Security or guarantee (which decision shall not prejudice its right to take the benefit of that Security or guarantee at a later time); or

- 3.1.2 take, or omit to take, any action which may impair the ranking set out in this deed.

#### **3.2 Communication**

The Company covenants with the Senior Creditor and the Junior Creditor and consents to the Creditors communicating with each other about the Company's affairs for the purpose of this deed, the Senior Debt and the Junior Debt, and the Company and Creditors consent to the sharing of any monitoring surveyor's reports relating to the Charged Property and the building works.

### **4. Junior Creditor Covenants**

#### **4.1 No other security**

Prior to the Senior Priority Debt Discharge Date, the Junior Creditor covenants with the Senior Creditor that it shall not:

- 4.1.1 take, or allow to subsist, any Security (other than a Junior Security Interest), or any guarantee, from any person for or in respect of any of the Junior Debt or from the Company in respect of a loan or credit provided to the Junior Creditor by another person unless:

- 4.1.1.1 the benefit of that Security or guarantee is conferred on the Senior Creditor at, or before, the time the Security or guarantee is created in such manner and such form as the Senior Creditor may reasonably require; or

- 4.1.1.2 the Senior Creditor has declined to take the benefit of that Security or guarantee (which decision shall not prejudice its right to take the benefit of that Security or guarantee at a later time); or

- 4.1.2 take, or omit to take, any action which may impair the ranking set out in this deed,

#### **4.2 No other arrangements**



The Junior Creditor shall not make any arrangement which would place, or which aims to place, the Junior Creditor in a position similar to that in which it would be if the Junior Debt had been secured by Security (other than the Junior Security Interests).

## **5. Preservation of Rights**

### **5.1 Rights and remedies not prejudiced**

Nothing in this deed shall as between the Company and a Creditor affect or prejudice any rights or remedies of a Creditor under its Security Documents.

### **5.2 No waiver**

No delay in exercising rights and remedies in respect of the Senior Debt or the Junior Debt because of any term of this deed postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

## **6. Waiver and Amendment of Debt Documents**

### **6.1 Restricted waivers and amendments**

Neither the Creditors nor the Company shall agree any modification, waiver or amendment to, or make any other agreement affecting, a Debt Document, which would:

- 6.1.1 increase the margin or change the basis on which the interest payable is calculated under a Debt Document;
- 6.1.2 increase the commitments of the Senior Creditor or the Junior Creditor under a Debt Document; or
- 6.1.3 amend or vary the provisions relating to gross-up or calculation of interest on a substitute basis in a Debt Document; or
- 6.1.4 defer any scheduled repayment of the Senior Debt by more than 3 months.

### **6.2 Permitted waivers and amendments**

Nothing in clause 6.1 shall prevent any change in interest or margin permitted by a Debt Document *under the provisions relating to calculation of additional or increased costs, gross-up, calculation of interest on a substitute basis, default interest or other provisions.*

## **7. Book Debts, Insurance and Custody of Documents**

### **7.1 Book debts**

Notwithstanding the terms of any charge over book or other debts contained in any Security Document and any covenant by the Company to pay those debts into any particular account, the parties agree that:

- 7.1.1 the Company shall not be deemed in breach of any such covenant so long as it complies with any such covenant in the Senior Debt Documents;
- 7.1.2 the Senior Creditor may credit any payments received by it in respect of book and other debts to any account of the Company with the Senior Creditor; and
- 7.1.3 the Senior Creditor may, in respect of any credit balances on any of the Company's accounts, notwithstanding any charge over those credit balances created by any Junior Security Document:

- 7.1.3.1 prior to the earlier of the Senior Priority Debt Discharge Date and any Enforcement Action permit the Company to draw on any credit balance and otherwise permit any such account to continue to be operated as a current account; and
- 7.1.3.2 prior to the Senior Priority Debt Discharge Date and to the extent permitted by the relevant Senior Debt Document, exercise any right of set-off or combination it may have against any account of the Company without regard to the other provisions of this deed or any Junior Debt Document.

## **7.2 Insurance**

The Senior Creditor may require the Company to insure its assets and, before the Enforcement Date, apply any monies received or recovered in respect of any claim under any relevant insurance policy in accordance with the terms of the Senior Debt Documents or such other insurance provisions in the Debt Documents as the Senior Creditor may select. The Creditors acknowledge that the Company's compliance with the insurance obligations so selected shall be a full discharge by the Company of its insurance obligations under the Debt Documents.

## **7.3 Title documents**

The Senior Creditor shall be entitled, but not obliged, to hold each title or other document relating to any asset subject to a Senior Security Interest. The Junior Creditor may inspect any such documents provided it gives reasonable prior written notice to the Senior Creditor.

## **8. Senior Debt Enforcement**

### **8.1 Senior Debt enforcement events**

The Senior Creditor shall consult the Junior Creditor before:

- 8.1.1 it serves a demand for payment of the Senior Debt on the Company (other than a demand for payment of Senior Debt on the due date);
- 8.1.2 it serves a notice on the Company to the effect that the Senior Debt is immediately due and payable;
- 8.1.3 it takes any step to *crystallise any floating charge (save for any automatic crystallisation of a floating charge)* contained in any Senior Security Document;
- 8.1.4 it takes any step to enforce any Senior Security Interest, whether by appointing a Receiver, exercising its power of sale or otherwise; or
- 8.1.5 it presents, or joins in, an application for an administration order or a petition for a winding-up order to be made in relation to the Company or it initiates, or supports or takes, any step with a view to any voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving the Company or it issues a notice of intention to appoint an administrator or appoints an administrator of the Company;
- 8.1.6 a Receiver appointed by it sells, leases or disposes of an asset subject to any Senior Security Interest or grants an interest in, or light in respect of, such an asset.

### **8.2 Consultation duties**

If the Senior Creditor consults the Junior Creditor under clause 8.1:

- 8.2.1 the Junior Creditor shall respond as quickly as is reasonably practicable;

- 8.2.2 the Creditors shall consult together with a view to agreeing the method of enforcement or other relevant action and, where appropriate, with a view to agreeing a suitable person to be appointed as Receiver (and such consultation and agreement shall also precede any removal of any Receiver and any appointment of a successor); and
- 8.2.3 if appropriate, the Creditors shall co-operate with each other in realising the assets subject to the Security Documents.

### **8.3 When consultation not required**

The Senior Creditor may take any action referred to in clause 8.1, without consulting or reaching agreement with the Junior Creditor, if it reasonably believes that taking any such action immediately is necessary to protect its interests. No action taken by the Senior Creditor in accordance with this clause 8.3 shall be invalid or ineffective because of its failure to consult or reach agreement with the Junior Creditor.

### **8.4 Notification of action taken**

As soon as reasonably practicable after taking any action in accordance with clause 8.3, the Senior Creditor shall inform the Junior Creditor of the action taken and, if a Receiver has been appointed, consult with the Junior Creditor with a view to that Receiver's appointment continuing or, if that is not agreed, to the appointment of others to act jointly with him.

### **8.5 Marshalling**

The Junior Creditor waives any right it has, or may have in the future, to marshalling in respect of any Senior Security Interest.

## **9. Junior Debt Enforcement**

### **9.1 Junior Debt enforcement events**

Prior to the Senior Priority Debt Discharge Date, except with the prior written consent of the Senior Creditor, the Junior Creditor shall not take any Enforcement Action; provided that if the Junior Creditor notifies the Senior Creditor in writing that it intends to take Enforcement Action and if the Senior Creditor does not take Enforcement Action during the thirty (30) day period following receipt by the Senior Creditor of such notice then the Junior Creditor may take Enforcement Action.

### **9.2 Senior Creditor directions to Junior Creditor**

*Prior to the Senior Priority Debt Discharge Date, the Junior Creditor shall comply with any directions given by the Senior Creditor relating to taking any of the following actions:*

- 9.2.1 presenting an application for an administration order or a petition for a winding-up order to be made in relation to the Company;
- 9.2.2 joining in, or opposing, such an application or petition; or
- 9.2.3 voting for or against, or accepting or rejecting:
  - 9.2.3.1 any proposal in a voluntary arrangement or administration in relation to the Company or in its winding-up;
  - 9.2.3.2 any scheme of arrangement proposed in relation to the Company; or
  - 9.2.3.3 any rescheduling, refinancing or reorganisation agreement or moratorium in respect of any debts of the Company.



## **10. Application of Enforcement Proceeds**

### **10.1 Order of distribution**

*The priority of the Creditors shall stand (regardless of the order of execution, registration or giving of notice or otherwise) so that all proceeds of enforcement or realisation of all or any of the Security constituted by any of the Security Documents shall, after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding-up and payments ranking in priority as a matter of law, be applied in the following order of priority:*

- 10.1.1 first, in or towards the discharge of the Senior Priority Debt;
- 10.1.2 second, once the Senior Priority Debt has been fully discharged, in or towards discharge of the Junior Debt;
- 10.1.3 third, after the Junior Debt has been fully discharged, in or towards discharge of the Senior Non-Priority Debt; and
- 10.1.4 fourth, after the Senior Non-Priority Debt has been fully discharged to the Company or any other person entitled to it.

### **10.2 Preferential debts**

The Junior Creditor shall bring into account any preferential payments received by it under section 175 of the Insolvency Act 1986.

### **10.3 Purchaser protection**

No purchaser dealing with a Creditor or any Receiver shall be concerned in any way with the provisions of this deed but shall assume that the Creditor or Receiver, as the case may be, is acting in accordance with the provisions of this deed.

## **11. Expenses**

### **11.1 Negotiation and amendment costs and expenses**

The Company shall, promptly on demand, pay to, or reimburse, each Creditor, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by that Creditor in connection with:

- 11.1.1 the negotiation, preparation, execution and perfection of this deed; and
- 11.1.2 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to this deed.

### **11.2 Enforcement costs and expenses**

The Company shall, promptly on demand, pay to, or reimburse, each Creditor, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by that Creditor in connection with preserving or enforcing (or attempting to do so) any rights under, or monitoring the provisions of, this deed.

## **12. Duration**

### **12.1 Duration**

This deed shall cease to have effect when the Senior Debt has, to the satisfaction of the Senior Creditor, been irrevocably and unconditionally paid and discharged in full.



### **13. Restrictions on Assignments**

#### **13.1 Junior Creditor restrictions on assignment and transfer**

The Junior Creditor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or any Junior Debt Document without first requiring the assignee or transferee to execute and deliver to the Senior Creditor a deed (in a form satisfactory to the Senior Creditor) in which the assignee or transferee agrees to be bound by the terms of this deed,

### **14. Company's Acknowledgements**

#### **14.1 Company's acknowledgement and consent**

The Company acknowledges the terms of this deed and consents to the Creditors communicating with each other about the Company's affairs for the purposes of this deed.

#### **14.2 No reliance by Company**

The Company further acknowledges that none of the provisions entered into by the Creditors in this deed are for the benefit of the Company, nor may they be enforced or relied on by the Company.

### **15. Endorsement on Security Documents**

- 15.1** Each Creditor agrees to endorse a memorandum of this deed on each Security Document entered into or to be entered into in its favour, and acknowledges the right of the other Creditor to the production and delivery of a copy of any such Security Document as soon as reasonably practicable.

### **16. Land Registry**

- 16.1** The parties to this deed hereby apply to the Land Registrar to note in the appropriate manner at the Land Registry the priority arrangements agreed in this deed in so far as those arrangements affect any registered land over which any Security is or has been granted under or pursuant to any Security Document.

### **17. Amendments, Waivers And Consents**

#### **17.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative), except that:

- 17.1.1 the Senior Creditor does not need the Junior Creditor's consent to an amendment to this deed (and the Junior Creditor need not be party to any amendment document) that only alters the Company's obligations to the Senior Creditor and the corresponding rights of the Senior Creditor; and
- 17.1.2 neither Creditor needs the Company's consent to an amendment to this deed (and the Company need not be party to any amendment document) that only alters the obligations of one Creditor to the other Creditor and the corresponding rights of that other Creditor.

#### **17.2 Waivers and consents**

- 17.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

- 17.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under *this deed or by law shall prevent or restrict the further exercise of that or any other* right or remedy. No election to affirm this deed by a Creditor shall be effective unless it is in writing.

### **17.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

### **18. Severance**

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

### **19. Counterparts**

- 19.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

### **20. Third party rights**

- 20.1 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### **21. Notices**

#### **21.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

- 21.1.1 in writing;
- 21.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- 21.1.3 sent to:
  - 21.1.3.1 the Senior Creditor at:  
  
Lower Ground Floor, One George Yard,  
  
London, United Kingdom, EC3V 9DF  
  
Attention: Matthew Kerchner
  - 21.1.3.2 the Junior Creditor at:  
  
c/o 25 Long Grove, Seer Green, Beaconsfield, Buckinghamshire, HP9 2YN

Attention: Matthew Norris

21.1.3.3 the Company at:

52B BERNARD ST, ST ALBANS,  
~~3rd Floor, 180 Piccadilly, St James, London W1J 9HF~~ AL3 5QW

Attention: the Directors

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

## 21.2 Receipt by Junior Creditor and Company

Any notice or other communication that the Junior Creditor gives to the Company or the Senior Creditor gives to another party shall be deemed to have been received:

- 21.2.1 if delivered by hand, at the time it is left at the relevant address;
- 21.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 21.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 21.2(a) or clause 21.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 21.3 Receipt by Senior Creditor and Junior Creditor

Any notice or other communication given to the Junior Creditor by the Company or given to the Senior Creditor shall be deemed to have been received only on actual receipt.

## 21.4 Service of proceedings

This clause 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 21.5 No notice by e-mail

A notice or other communication given under or in connection with this deed is not valid if sent by e-mail.

## 22. General

Following the Senior Debt Discharge Date but before the Senior Debt Discharge Date has occurred the provisions of clauses 4 and 9 shall apply *mutatis mutandis* in favour of the Junior Creditor with reference to the Senior Creditor and the Senior Priority Debt being replaced by reference to the Junior Creditor and the Junior Debt and vice versa so that (i) the Junior Creditor will have priority rights over the Senior Creditor during that time and (ii) the Senior Creditor shall have the same rights to take Enforcement Action following expiration of a thirty (30) day written notice period as the Junior Creditor has while the Senior Priority Debt is outstanding.

## 23. Governing Law and Jurisdiction

### 23.1 Governing law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.



### **23.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Senior Creditor to take proceedings against the Company or the Junior Creditor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### **23.3 Other service**

Each of the Company and the Junior Creditor irrevocably consent to any process in any legal action or proceedings under clause 23.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



## **Schedule 1 - Senior Debt Documents**

### **Part 1. Senior lending documents**

*The Facility Agreement dated on or about the date of this Deed between the Company and the Senior Creditor.*

### **Part 2. Senior Security Documents**

1. Legal Mortgage dated on or about the date of this Deed between the Company and the Senior Creditor in respect of Sunset Court, High Street, Princes Risborough, Buckingham HP27 0AX (Title Number: BM358710); and
2. Debenture dated on or about the Date of this Deed between the Company and the Senior Lender.

## **Schedule 2 - Junior Debt Documents**

### **Part 1. Junior lending documents**

*The loan agreement dated on or about the date of this Deed between the Company and the Junior Creditor*

### **Part 2. Junior Security Documents**

The legal charge dated on or about the Date of this Deed between the Company and the Junior Creditor in respect of Sunset Court, High Street, Princes Risborough, Buckingham HP27 0AX (Title Number: BM358710).

Executed as a deed by **Quanta Finance Limited**

acting by [ ] its director

Director

in the presence of:

Witness signature

Witness name

Witness Address

Witness occupation

Executed and delivered as a deed by )  
Matthew Norris, a duly authorised )  
director of **MDN Properties Pension** )  
**Scheme** in the presence of: )

*Matthew Norris*

Witness's signature: *[Signature]*

Witness's name: *KEVIN HOLLOMAN*

Witness's address: *11 HOWARD CRESENT  
SEER GREEN  
BENCONSFIELD, HP9 2XR*

Witness's occupation: *DIRECTOR*

Executed as a deed by **XP 4 Developments Limited**

acting by [ *JACK TIGUENS* ] its director

*[Signature]*

Director

in the presence of:

Witness signature *N Marchant*

Witness name *NICOLE MARCHANT*

Witness Address

Witness occupation

*Solicitor*

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