

DATED 24 October 2012

TRANSPORT FOR LONDON (1)

and

ALDGATE TOWER DEVELOPMENTS LIMITED (2)

AGREEMENT

pursuant to section 278 of
the Highways Act 1980
relating to Whitechapel High Street and
Colchester Street London

THIS AGREEMENT is made this

24

day of

October

2012

BETWEEN:

- (1) **TRANSPORT FOR LONDON** of Windsor House 42-50 Victoria Street London SW1H 0TL ("TfL"); and
- (2) **ALDGATE TOWER DEVELOPMENTS LIMITED** (Company number 07829185) whose registered office is situate at Maersk House First Floor Braham Street London E1 8EP ("the Developer").

WHEREAS:

- (1) The Developer has been granted the Planning Permission for the Development which involves the carrying out of the Works on the TfL Road.
- (2) TfL is authorised by virtue of Part V of the 1980 Act to carry out works to the TfL Road and has agreed to enter into this Agreement with the Developer for the purpose of securing the carrying out by the Developer of the Works to the TfL Road on behalf of but at no cost to TfL.
- (3) This Agreement is made pursuant to section 278 of the 1980 Act.
- (4) TfL is satisfied that this Agreement will be of benefit to the public.

NOW IT IS AGREED AS FOLLOWS:

1 Interpretation

- 1.1 In this Agreement the following words or expressions shall, where the context so admits, have the following meaning:

"Adjoining Highway"

means the highway adjoining the TfL Road for which TfL is the highway authority, the extent of which is shown edged blue on the Plan;

"Approved Schedule of Condition"

means the Schedule of Condition which has been approved by TfL in writing in accordance with clause 2.2(c);

"Bond"

means the bond referred to in clause 2.5;

"Bond Figure"

means the sum of £250,000 adjusted in accordance with the movements in the Index between the date of this Agreement and a date being ten working days prior to commencement of any part of the Works to the intent that the adjusted figure shall constitute the Bond Figure;

"Contract"

means the JCT 2011 Design and Build form of contract (as amended) together with any amendments by TfL (or such other contract as may be agreed between the Developer

	and TfL) to be let by the Developer under the terms of this Agreement for the construction of the Works;
"Detailed Drawings"	means the drawings to be submitted and approved in accordance with clause 2.4(a) and/or clause 2.5(a) (as the case may be);
"Development"	means refurbishment and extension of existing Marsh Centre Building, demolition of other remaining buildings and redevelopment to provide new office accommodation as authorised by the Planning Permission;
"Escrow Payment"	means the sum of £10,000 already paid to TfL by the Developer in respect of highway management engineering and transportation advice and assistance given to the Developer by TfL together with its administrative costs and which TfL is holding in an account allocated as 'Aldgate Tower' under sort code 400250 and account no. 13664007;
"Final Certificate"	means the certificate issued under clause 4;
"Index"	means the Road Construction Tender Price Index issued by the Department for Transport;
"Outline Drawing"	means the five diagrams attached to this Agreement at Appendix 2 showing the phased works;
"Plan"	means drawing number SRM/SK/17951/NR/1203011 rev O attached to this Agreement at Appendix 1;
"Planning Permission"	means planning permission granted by the London Borough of Tower Hamlets on 13 December 2004 under reference number PA/04/01190 or such other planning permission which may have superseded it provided that the development authorised by it is substantially the same as the Development;
"Programme"	means the programme for the Works to be agreed with TfL before any part of the Works are commenced (together with such revisions that may be agreed in writing between the parties from time to time) such programme to include a statement of the overall sequence in which the Works are to

"Provisional Certificate"

be carried including the times during the day (having regard to TfL's current timing requirements) and a general description of the agreed arrangements and methods of construction which the Developer is to adopt, together with an estimate of the amount of time to be spent by the Developer in carrying out and completing the Works;

means the certificate issued under clause 4;

"Schedule of Condition"

means details to be submitted by the Developer to TfL in accordance with clause 2.2(b) and showing the condition of the TfL Road prior to commencement of any part of the Works;

"Specification"

means the Specification for Road and Bridge Works published by the Department for Transport or such other standards as may be applicable together with such variations as may be agreed between the parties from time to time;

"Stage One Works"

means the highway works to be carried out by the Developer in accordance with the Specification, as illustrated on the Detailed Drawings and as set out in Part A of the First Schedule together also with such additional ancillary works as may be reasonably and properly required by TfL following the Stage 3 and Stage 4 Safety Audits (if TfL reasonably and properly requires such audits to be undertaken in relation to the Stage One Works);

"Stage Two Works"

means the reinstatement works to be carried out by the Developer in accordance with the Specification and the Agreed Schedule of Condition and as set out in Part B of the First Schedule together also with such additional works required by TfL following the Stage 3 and Stage 4 Safety Audits;

"Statutory Undertaker"

any person, company, corporation, board or authority whose apparatus is pursuant to a statutory right or to a licence granted under Section 50 of the 1991 Act at the date of this Agreement already installed in, under, over or upon the land on which the Works are to be carried out PROVIDED THAT such expression shall include the authorised successor to any such person, company,

- corporation, board or authority;
- “Surety”** means any bank or other financial institution as may be nominated by the Developer and approved by TfL for the purposes of the Bond;
- “TfL Group”** means TfL and all its subsidiaries (as defined in section 736 of the Companies Act 1980) from time to time;
- “TfL Road”** means highway at Leman Street and Braham Street as shown edged red on the Plan;
- “Trees”** means the eight trees currently located on the TfL Road as shown on the drawing attached to this Agreement at Appendix 3;
- “VAT”** means Value Added Tax and any tax of a similar nature substituted for it or in addition to it;
- “Works”** means the Stage One Works and/or the Stage Two Works (as the case may be);
- “1980 Act”** means the Highways Act 1980; and
- “1991 Act”** means the New Roads and Street Works Act 1991.
- 1.2 A reference to a clause, schedule or recital followed by a number is a reference to the clause, schedule or recital, as the case may be, of this Agreement bearing that number.
- 1.3 Where the context so admits the expression “TfL” shall include its successors in function.
- 1.4 Where the context so admits the expression “the Developer” shall include its successors in title.
- 1.5 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine, feminine and neuter genders.
- 1.6 The headings in this Agreement are for convenience only and shall not be deemed to be part of, or taken into consideration in the interpretation of, this Agreement.
- 2 Developer’s Covenants**
- Notice**
- 2.1 The Developer covenants with TfL to give at least 28 days written notice of the Developer’s intention to commence the Development.

Schedule of Condition

- 2.2 The Developer shall not commence the Stage One Works until:
- (a) TfL and the Developer have carried out a joint inspection of the TfL Road;
 - (b) the Developer has prepared and submitted to TfL the Schedule of Condition which takes into account the results of the joint inspection carried out pursuant to clause 2.2(a); and
 - (c) TfL has approved the Schedule of Condition in writing.

Bond

- 2.3 At least 10 working days prior to commencement of any part of the Works and without expense to TfL the Developer covenants with TfL to enter into a Bond with the Surety to be bound with the Developer to TfL in the Bond Figure for the due performance of the Developer's obligations under this Agreement substantially in the form of the draft Bond at the Third Schedule.

Stage One Works

- 2.4 The Developer covenants with TfL:
- (a) to submit detailed drawings and/or plans of the Stage One Works showing in detail the layout and design construction of all road and drainage works and landscaping including all necessary traffic management measures for the approval of TfL in accordance with which the Stage One Works shall be carried out and the contractor shall not commence any part of the Stage One Works until TfL has given its approval in writing to such detailed drawings and/or plans;
 - (b) to give at least 28 days written notice of the Developer's intention to commence any part of the Stage One Works on behalf of TfL and then diligently to proceed with the Stage One Works in accordance with the provisions of the First Schedule, the Second Schedule and the Programme;
 - (c) to complete the Stage One Works in accordance with the Detailed Drawings Programme and the Specification to the reasonable satisfaction of TfL; and
 - (d) to supply TfL with a copy of the Contract as soon as reasonably practicable following its completion.

Stage Two Works

- 2.5 The Developer covenants with TfL:
- (a) to submit detailed drawings and/or plans of the Stage Two Works (including any works necessary to the Adjoining Highway) showing in detail the layout and design construction of all road and drainage works and landscaping including all necessary traffic management measures for the approval of TfL in accordance with which the Stage Two Works shall be carried out and the contractor shall not commence any part of the Stage Two Works until TfL has given its approval in writing to such detailed drawings and/or plans;

- (b) to give at least 28 days written notice of the Developer's intention to commence any part of the Stage Two Works on behalf of TfL and then diligently to proceed with the Stage Two Works in accordance with the provisions of the First Schedule, the Second Schedule and the Programme;
- (c) to complete the Stage Two Works in accordance with the Detailed Drawings Programme and the Specification to the reasonable satisfaction of TfL;
- (d) to supply TfL with a copy of the Contract as soon as reasonably practicable following its completion; and
- (e) not to occupy or use for trading or permit the occupation or use for trading of any building constructed as part of the Development until the entirety of the Works have been completed, completion of which shall be evidenced by the issue of the Provisional Certificate.

Indemnity

2.6 The Developer covenants with TfL to:

- (a) indemnify TfL from and against all actions, costs, claims demands, charges and expenses whatsoever arising or which may arise out of or be incidental to the execution of the Works other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of clause 2.6(b) shall apply;
- (b) indemnify TfL against all claims under Parts I and II of the Land Compensation Act 1973 arising out of the use of the Works

PROVIDED THAT:

- (a) TfL shall notify the Developer immediately upon receipt of any such claim referred to in clauses 2.6(a) and 2.6(b);
- (b) TfL shall afford the Developer a minimum period of 21 days to make representations about such claim; and
- (c) TfL shall take into account the representations made by the Developer in deciding whether to contest any such claim.

2.6A The indemnity provided by clause 2.6 shall not apply in respect of any action, cost claim, demand, charge or expense whatsoever arising, or which may arise out of or be incidental to any negligent or defective act, default, or omission on the part of TfL their agents workmen or employees.

Consents

2.7 Before commencement of any part of the Works and at no expense to TfL the Developer shall obtain such consents, licences or permissions as may be required for the purposes of carrying out the Works and to comply with the same and indemnify and keep TfL indemnified from and against all liabilities, costs, claims, actions, demands or expenses which may arise from the Developer's failure to obtain or to comply with such consents, licences or permissions.

Adjoining Highway

2.8 The Developer covenants with TfL:

- (a) to carry out the Works in a responsible manner so as to minimise the impact of the same on the Adjoining Highway and users of the Adjoining Highway;
- (b) to remedy as soon as practicable and to TfL's satisfaction any damage caused to the Adjoining Highway by the carrying out of the Works; and
- (c) to carry out, as part of the Stage Two Works, such works to the Adjoining Highway as are necessary to merge and create a seamless finish between the TfL Road and the Adjoining Highway, such works to be carried out to TfL's reasonable satisfaction.

Trees

2.9 Unless otherwise agreed with TfL in writing, the Developer shall not commence any part of the Works until:

- (a) the Developer has served not less than one months written notice on TfL requiring TfL to remove the Trees from the TfL Road; and
- (b) TfL has removed the Trees from the TfL Road.

Costs

2.10 The Developer shall pay to TfL on the execution of this Agreement:

- (a) TfL's reasonable legal costs in connection with the preparation and completion of this Agreement; and
- (b) such reasonable costs and expenses properly incurred by TfL in respect of the highway management engineering and transportation advice and assistance given to the Developer by TfL together with its administrative costs each of which have been incurred prior to the date of this Agreement and which exceed the Escrow Payment.

2.11 The Developer shall pay to TfL within 10 working days of demand:

- (a) the reasonable costs and expenses properly incurred by TfL in the project management, checking and approving the design, checking the Stage 1, 2, 3 and 4 Safety Audits (and/or the cost of carrying out the Stage 3 and 4 Safety Audits) and carrying out periodic site inspections of the Works;
- (b) from time to time during the course of the Works the reasonable costs and expenses properly incurred by TfL in the testing of any materials carried out by TfL;
- (c) any costs properly incurred by TfL in connection with the diversion and/or protection of the apparatus of Statutory Undertakers as evidenced by copies of their invoices;
- (d) any costs properly incurred by TfL in making and implementing any traffic regulation orders (as defined in the Road Traffic Regulation Act 1984 and any

other statute) which TfL deem necessary as a result of the Works and whether made or implemented prior to during or following the completion of the Works;

- (e) all costs properly incurred by TfL in updating TfL's Asset Inventory and Management System; and
- (f) the reasonable costs incurred by TfL in removing the Trees from the TfL Road pursuant to clause 2.9 of this Agreement and replanting them at an alternative location to be determined by TfL.

3 Access to the Public Highway and Other Land

TfL at no extra cost to the Developer and without prejudice to their respective statutory powers and duties give to the Developer licence to enter and to remain upon, with or without workmen, plant and machinery, so much of the public highway under TfL's control as TfL shall agree is reasonably necessary for the Developer to carry out its obligations under this Agreement and it is agreed and declared that such licence extends to breaking open (subject where appropriate to making good its surface) and, without limitation to the other provisions of this Agreement, carrying out works in or under the public highway PROVIDED THAT for the avoidance of doubt land shall not be regarded as being under TfL's control if entry on to the land would amount to a breach of an express or implied covenant by TfL to any occupier of such land.

4 Certification and Adoption of the Works

- 4.1 When the entirety of the Works has been completed in accordance with the provisions of this Agreement TfL shall issue the Provisional Certificate to that effect the issue of such certificate not to be unreasonably withheld or delayed.
- 4.2 Upon the issue of the Provisional Certificate such of the Works that are not part of the public highway shall become public highway but TfL shall remain as street manager for the purposes of section 49(4) of the 1991 Act until the date of issue of the Final Certificate.
- 4.3 The Developer shall at its expense, maintain the Works for the period of 12 months from the date of issue of the Provisional Certificate and prior to the expiration of that period the Developer shall as soon as practicable reinstate and make good any defects or damage due to faulty survey, design, materials or workmanship which may have arisen or be discovered during such period (including any defect in or damage to the road surface water drainage system and highway cables) to the satisfaction of TfL.
- 4.4 At the expiration of the twelve months maintenance period referred to in clause 4.3 then **PROVIDED THAT:**
 - (a) any necessary reinstatement or other works have been completed to TfL's reasonable satisfaction in accordance with clause 4.3;
 - (b) any necessary reinstatement or other works to the Adjoining Highway have been completed to TfL's reasonable satisfaction;
 - (c) all monies due to be paid to TfL under this Agreement have been paid;

- (d) the dedication as public highway of any land and/or the grant of any easements required to be made to TfL under this Agreement has been completed;
- (e) the Stage 4 Safety Audit is produced and all necessary works reasonably required by TfL and notified to the Developer in writing as a result of the Stage 4 Safety Audit are completed to TfL's satisfaction; and
- (f) TfL has been provided with the highway adoption drawings as described in and pursuant to paragraph 30 of the Second Schedule, the 'As Built' drawings as described in and pursuant to paragraphs 31 and 32 of that Schedule and the Health and Safety File relating to the Works in accordance with paragraph 34 of that Schedule

TfL shall issue the Final Certificate, the issue of such certificate not to be unreasonably withheld or delayed.

4.5 Upon the issue of Final Certificate the Works shall become maintainable at public expense with effect from that date.

4.6 Following issue of the Final Certificate, TfL will issue to the Developer a final account of the costs incurred by TfL pursuant to this Agreement and the sums paid to TfL by the Developer (including the Escrow Payment) and within three months of the date of that account if:

- (a) the account shows that a further sum is due to TfL (the costs incurred having exceeded any sums received) the Developer will pay the outstanding sum to TfL; or
- (b) the account shows that the sums already paid by the Developer exceed the costs incurred by TfL then TfL will repay the balance to the Developer.

5 Release of the Bond

5.1 Within 20 working days of the issue of the Provisional Certificate TfL shall release the Developer and the Surety from their obligations under the Bond to the extent of 80%.

5.2 Within 20 working days of the issue of the Final Certificate TfL shall release the Developer and the Surety from all remaining liability under the Bond.

6 Delegation of the Developer's Obligations

6.1 It is agreed that the performance of the obligations on the part of the Developer to carry out the Works on behalf of TfL may be delegated to a contractor or sub-contractors PROVIDED THAT:

- (a) the Developer shall remain liable to TfL for the due performance and observance of this Agreement;
- (b) the Contract by which the obligations contained in this Agreement are delegated shall incorporate the Specification and the description of the Works appearing in the First Schedule and the Detailed Drawings and/or such other drawings as may be deemed by TfL to be contract drawings for the purposes of the Contract; and

- (c) the Developer shall ensure that for the purposes of the Contract the amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Works shall be not less than five million pounds £5,000,000.00 in respect of any one incident.

7 Notices

Any notice or demand required by this Agreement to be given or made will be in writing and will be served on TfL or the Developer by being forwarded by registered or recorded delivery post to their respective offices as stated within this Agreement and any notice sent by post will be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent.

8 Interest on Overdue Payments

In the event of any delay in the making of any payment required to be made by the Developer to TfL under this Agreement interest shall be payable on that sum at the rate of 3 per cent (3%) above the HSBC Bank plc base lending rate from time to time in force from the date when payment was due until the date of actual payment.

9 Assignment

The Developer shall not have the right to assign the benefit of this Agreement or any part of it without the consent of TfL and subject to such consent being given the Developer shall not, from the date of the assignment, be liable for any breach of the covenants contained in this Agreement but without prejudice to any subsisting breach occurring prior to the date of the assignment.

10 Miscellaneous Provisions

- 10.1 If construction of the Works shall not have commenced within 2 years of the date of this Agreement or such other period as TfL may agree, this Agreement shall cease to have effect.
- 10.2 Any third party who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 ("the Third Party Act") to enforce any term of this Agreement even though a term may purport to confer or may be construed as conferring a benefit on a third party. This does not affect any right or remedy of a third party, which exists or is available apart from the Third Party Act.
- 10.3 The Third Party Act applies to the Agreement to the effect that any member of the TfL Group and its appointed agents has the right to enforce any provision contained in the Agreement against the Contractor to the extent that the provision confers a benefit or purports to confer a benefit on that member of the TfL Group.
- 10.4 Parties to the Agreement are entitled to rescind the Agreement or vary any term of the Agreement without the consent of any member of the TfL Group.

IN WITNESS the parties have signed this Agreement as a Deed on the date written above

First Schedule

The Works

Part A - Stage One Works

The Stage One Works are shown on the Outline Drawing and comprise the creation of delivery and offloading points on the TfL Road to facilitate the construction of the Development.

Part B - Stage Two Works

The Stage Two Works shall comprise the reinstatement of the TfL Road to the standard set out in the Approved Schedule of Condition.

Second Schedule

Terms and Conditions for the Execution of the Works

1. The Works shall be executed by the Developer in accordance with the Specification the Detailed Drawings and the Programme which shall first have been prepared by a consultant engineer and then approved by TfL.
2. Not less than one calendar month prior to commencement of the Works the Developer shall submit to TfL for approval all designs documents drawings, Stage 1, and 2 Safety Audits specifications tender documents and the Programme for the construction of the Works together with the Developer's proposed arrangements for the supervision of the Works and full details of traffic management arrangements. Following completion of the Works the Developer shall submit to TfL the approved Stage 3 and 4 Safety Audits.
3. TfL shall approve or submit to the Developer their written comments in full upon those matters referred to in paragraph 2 of this Schedule as soon as possible and not later than two calendar months from receipt and the Developer shall not commence the Works until TfL's written approval has been obtained pursuant to paragraph 2 of this Schedule (other than for the Stage 3 and 4 Safety Audits) such approval not to be unreasonably withheld or delayed.
4. If the Developer shall wish to revise the Programme it shall notify TfL in writing of any revisions to the Programme at least 10 working days before implementing such revisions, provided always that such revisions shall not be implemented unless agreed by TfL.
5. TfL shall approve or submit to the Developer their written comments in full upon those matters referred to in paragraph 4 of this Schedule within 10 working days of receipt.
6. If TfL do not propose to give their approval in relation to any of those matters referred to in paragraph 2 or 4 of this Schedule they shall as soon as possible within the respective periods referred to in paragraphs 3 and 5 of this Schedule in writing so inform the Developer.

Traffic Regulation Orders

- 7.1 For temporary traffic orders the Developer shall at least 2 months before such orders are required to be implemented submit to TfL draft Order(s), Notices of Intention and plans.
- 7.2 For permanent traffic orders no Works unless otherwise agreed by TfL shall commence until such orders have been brought into force and the Developer shall at least 4 months before they wish to execute the Works submit to TfL draft Order(s), draft Notice of Intention and Plans.

Access

8. The Developer shall during the progress of the Works give or procure for TfL and any person or persons duly authorised by them unfettered access to every part of the Works and permit him or them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given

by TfL to conform to the Drawings and/or the Programme and the Specification.

9. The Developer shall not cover up or put out of view any works without the approval of TfL and shall afford full opportunity for it to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 2 working days notice to TfL whenever any such work or foundations is or are ready or about to be ready for examination.
10. TfL shall without unreasonable delay unless they consider it unnecessary and advise the Developer accordingly attend when required by the Developer upon at least 2 working days notice for the purpose of examining and measuring such works or of examining such foundations.

Testing of Materials

11. Before commencement and during the construction of the Works the Developer shall submit for approval to TfL a list of suppliers from whom it wishes to obtain materials for incorporation in the Works together with test certificates for such materials and shall at its own cost provide TfL with any samples of materials it may reasonably request for testing purposes.
12. TfL shall have power in its reasonable discretion to test or require the testing of materials plant workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not in accordance with the Specification and the Drawings.
13. The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not in accordance with the Specification and the Drawings. The replacement materials or repair shall be in accordance with the Specification and the Drawings.
14. TfL shall for the purposes of this Schedule be allowed reasonable access and admission to the Works or the places where materials or plant for the Works may be stored or in the course of preparation manufacture or use.
15. The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by TfL pursuant to paragraph 12 of this Schedule which are not capable of repair or remedy from the site of the Works and if the Developer shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Works they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Works.

Opening Up of the Works

16. During the construction of the Works and prior to the issue of the Final Certificate TfL may issue instructions to the Developer to open up or expose any part of the Works which have been covered up without previously being inspected by TfL and TfL will endeavour to confirm in writing any oral instruction as soon as possible after the oral instruction has been given.
17. Should the Developer fail to comply with any such instructions TfL may so take up or expose the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works the reasonable and proper cost of

such taking up or exposure and reinstatement to be met by the Developer.

18. If the Works are covered up by the Developer after giving at least 2 working days notice of its intention so to do and TfL shall have failed to inspect within that period and shall subsequently require the Works or any part of them to be uncovered for the purposes of inspection and:
 - 18.1 If inspection reveals that the relevant part or parts of the Works has or have been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Works uncovered shall be borne by TfL and that party shall be liable for any consequential costs expenses or damages which shall be directly or indirectly attributable to delay or interference occasioned by such uncovering testing and reinstatement;
 - 18.2 if inspection reveals that the relevant part or parts of the Works has or have not been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Works uncovered shall be borne by the Developer.

Statutory Undertakers

19. Prior to the commencement of the Works the Developer shall give notice to Statutory Undertakers of the proposal to carry out the Works as if they were works for road purposes or major highway works as defined in Section 86 of the 1991 Act and at the same time deliver a copy of such notice to TfL.
20. The Developer shall at no cost to TfL carry out or procure the carrying out of any works or measures as are required by Statutory Undertakers in consequence of the proposal to carry out the Works to the plant and equipment of Statutory Undertakers on the site of the Works including payment of the costs of any diversions or new installations necessary for their completion and the Works referred to in the First Schedule shall be deemed not to have been completed until the cost of any such diversions or new installations has been paid by the Developer.
21. The Developer shall cause all highway or other drains or sewers all existing utilities and statutory undertakers apparatus including but not limited to gas and water mains pipes electric cables (if any) or telephone cables (if any) which are to be laid by the Developer under the Works together with all necessary connections from them to the boundary of the Works to be laid in so far as is practicable under the Works before the foundations of the Works are laid and shall also in so far as is practicable cause the connections from electric cables to any street lamps to be laid before the paving of any footways comprised in the Works is carried out.

Prevention of mud being carried on the public highway

22. Provision shall be made at no cost to TfL at the site of the Works and on the adjoining public highway to prevent the deposit of mud dust and other materials on public highways by vehicles and plant leaving the site of the Works

Traffic control

23. During the period when the Works are being executed the Developer shall from time to time institute at its own expense reasonable traffic management and safety

measures approved by TfL (before their implementation) to maintain the flow and safety of traffic and pedestrians on the highways in the vicinity of the site of the Works and shall use reasonable endeavours to procure that contractors site traffic in respect of the Works and the Development shall adhere to such route or routes when approaching or departing from the site of the Works as may from time to time be agreed with TfL.

Road safety

24. During the period over which the Works are being executed the Developer shall comply with the provisions of Chapter Eight of the Department of Transport's Traffic Signs Manual 1991 (published by HMSO) and any amendment thereto for lighting and signing the Works and any further reasonable requirements of the highway authority.

Remedial works

25. Subject to paragraphs 26, 27 and 28 of this Schedule if the Works or any part or parts of them (including without prejudice to generality failure to make good defects) are not executed or completed in accordance with the terms of this Agreement TfL may execute or complete the relevant part or parts of the Works in accordance with the provisions of this Agreement by its own employees or by contractors and recover its reasonable and proper costs in connection with and/or arising from the carrying out of such works (including the costs referred to in Clause 2) from the Surety.
26. Before starting any works under paragraph 25 of this Schedule TfL shall first give the Developer 15 working days' written notice or (in the event of there being a significant danger to users of the highway) such lesser period as may in the circumstances be reasonable of its intention to do so.
27. Any notice served pursuant to paragraph 26 of this Schedule shall specify the Works which have not been executed or completed in accordance with the terms of this Agreement and the period of the notice ("the Notice Period") given.
28. If before the expiry of the Notice Period the Developer shall serve written notice upon TfL that the Developer intends forthwith to execute and/or to complete the Works specified in the notice served by under paragraph 26 of this Schedule in accordance with the terms of this Agreement the party who served the notice shall not be entitled to execute or to complete such Works unless the Developer then fails to execute and/or complete them.

Final Site clearance

29. On completion of the Works the Developer shall clear away and remove from the site of the Works all constructional plant surplus material rubbish and temporary works of every kind and leave the site of the Works in a workmanlike condition.

Highway Adoption Drawings

30. Within one month of the issue of the Provisional Certificate the Developer shall provide TfL with two sets of scheme drawings to the satisfaction of TfL showing to a scale of 1:500 (or such other scale as TfL shall reasonably require) the areas of newly adopted highway in relation to the existing highway.

"As built" Drawings

31. Within 3 months of the issue of the Provisional Certificate the Developer shall provide TfL with two sets of drawings to the satisfaction of TfL showing to a scale of 1:500 (or such other scale as TfL shall reasonably require) the Works "as built." These drawings to be provided also as a CAD file to a format agreed with TfL.
32. The "As built" drawings must include:
 - 32.1 all departures from the approved Stage 2 drawings;
 - 32.2 the position of all Statutory Undertakers' apparatus;
 - 32.3 any additional levels boreholes records or other information which TfL considers to be useful;
 - 32.4 separate titled drawings outlining or identifying;
 - 32.5 the location direction of flow and construction materials of all new and existing drainage ditches and the location of outfalls or soakaways;
 - 32.6 all street lighting illuminated signs and cables;
 - 32.7 the highway boundary by means of red edging;
 - 32.8 signs and road markings on highway and location and details of sign faces;
 - 32.9 all completed finishes on the highway that is (but without limitation) high friction surfacing, wearing course, tactile paving, carriageway, footway finishes and kerb types.

CDM Regulations

33. Within 3 months of the issue of the Provisional Certificate the Developer shall supply to TfL an electronic version of the Health and Safety File relating to the Works pursuant to the Construction (Design and Management) Regulations 1994 ("the CDM Regs") together with two paper copies (or three copies if the Works include structures or bridges) of the said File.
34. The Health and Safety File shall:
 - 34.1 include a report summarising the construction phase of the Works;
 - 34.2 identify any significant problems encountered during the construction phase and describe how those problems were overcome;
 - 34.3 include details of the design options selected by the Developer (including the Developer's Contractor) any significant design changes and the reasons for the changes;
 - 34.4 include a section describing all materials used in the Works their source of supply and their level of performance together with the name and address of the manufacturer and shall describe any problems encountered;
 - 34.5 include a report summarising details of the handover, walk through with the officer nominated by TfL to undertake that function (amongst others) together with the

date of that activity the names of the attendees a summary of the issues raised and consequential actions;

34.6 include one set of the "As built" drawings referred to in paragraph 31 of this Schedule.

35 It is agreed that the Developer is the "client" for the purposes of the CDM Regs.

Third Schedule

Bond

BY THIS BOND WE:

1 [] whose registered office is situate at []
[] (Company no. []) ("the Developer"); and

2 [] of [] ("the Surety")

are held and formally bound to:

3 **TRANSPORT FOR LONDON** of Windsor House 42-50 Victoria Street London SW1H 0TL
("TfL")

for payment of the sum of [] Pounds] ([£])

Sealed with our respective seals and dated the [] day of [] 20[]

WHEREAS by an Agreement ("the Agreement") dated the day of [] 20[] and made between TfL (1) and the Developer (2), the Developer agreed with TfL to carry out the Works as set out in the Agreement.

NOW THE CONDITIONS of the above written Bond are such that if:

- (a) the Developer shall perform fulfil and keep all and every clause term condition and stipulation in the Agreement then the above Bond or obligation shall be void but otherwise shall remain in full force and effect; or if
- (b) on default by the Developer or upon the Developer making a proposal for a voluntary arrangement for a composition of debts or scheme or arrangement or having a provisional liquidator appointed or a winding up order made or passing a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction) or having an administrator or administrative receiver appointed the Surety shall satisfy and discharge the damages sustained by TfL thereby up to the amount of the Bond.

PROVIDED ALWAYS THAT the Surety shall not be released or discharged from this Bond by any arrangements which may either with or without the assent be made between the Developer and TfL either for alterations of time or mode of payment or for variation of the Works or things to be executed or by any dealing or transactions which may take place between the Developer and TfL and for the avoidance of doubt it is hereby declared that in the event of any failure by the Developer to perform and observe the terms of the Agreement TfL shall be at liberty to invoke the provisions of this Bond and shall be under no obligation to pursue any remedy against any other party or to exercise any statutory power available to TfL for the recovery of the cost of the Works from the owner or owners of any adjoining premises.

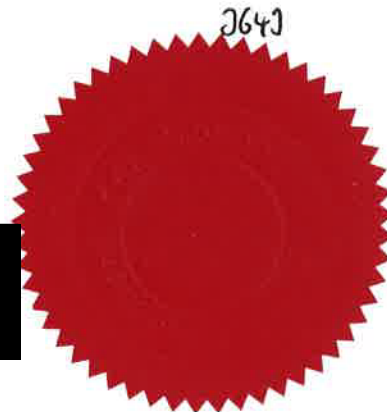
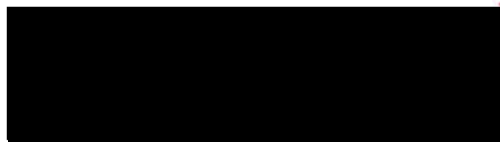
THIS BOND is governed by the law of England and Wales and the parties agree to submit themselves in case of dispute not capable of being resolved by arbitration to the jurisdiction of an English Court.

EXECUTED AS A DEED by [the Developer][the Surety]

THE CORPORATE SEAL of)

TRANSPORT FOR LONDON

was affixed in the presence of:



ed in the presence of
Company Secretary an Officer authorised by the Company

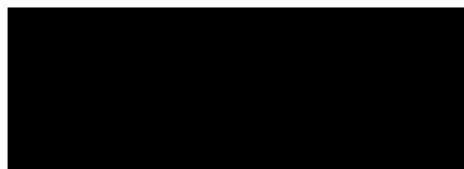
EXECUTED AS A DEED by)

ALDGATE TOWER DEVELOPMENTS)

LIMITED acting by two Directors or)

a Director and the Secretary:)

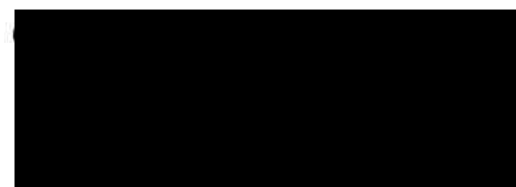
~~Director~~ SOLE OFFICER



~~Director/Secretary~~ WITNESS



NIAL HOLLER



APPENDIX 1

Plan



Aldgate Tower Section 278 Agreement

Boundary Plan

Red line indicates extent of boundary for Section 278 works

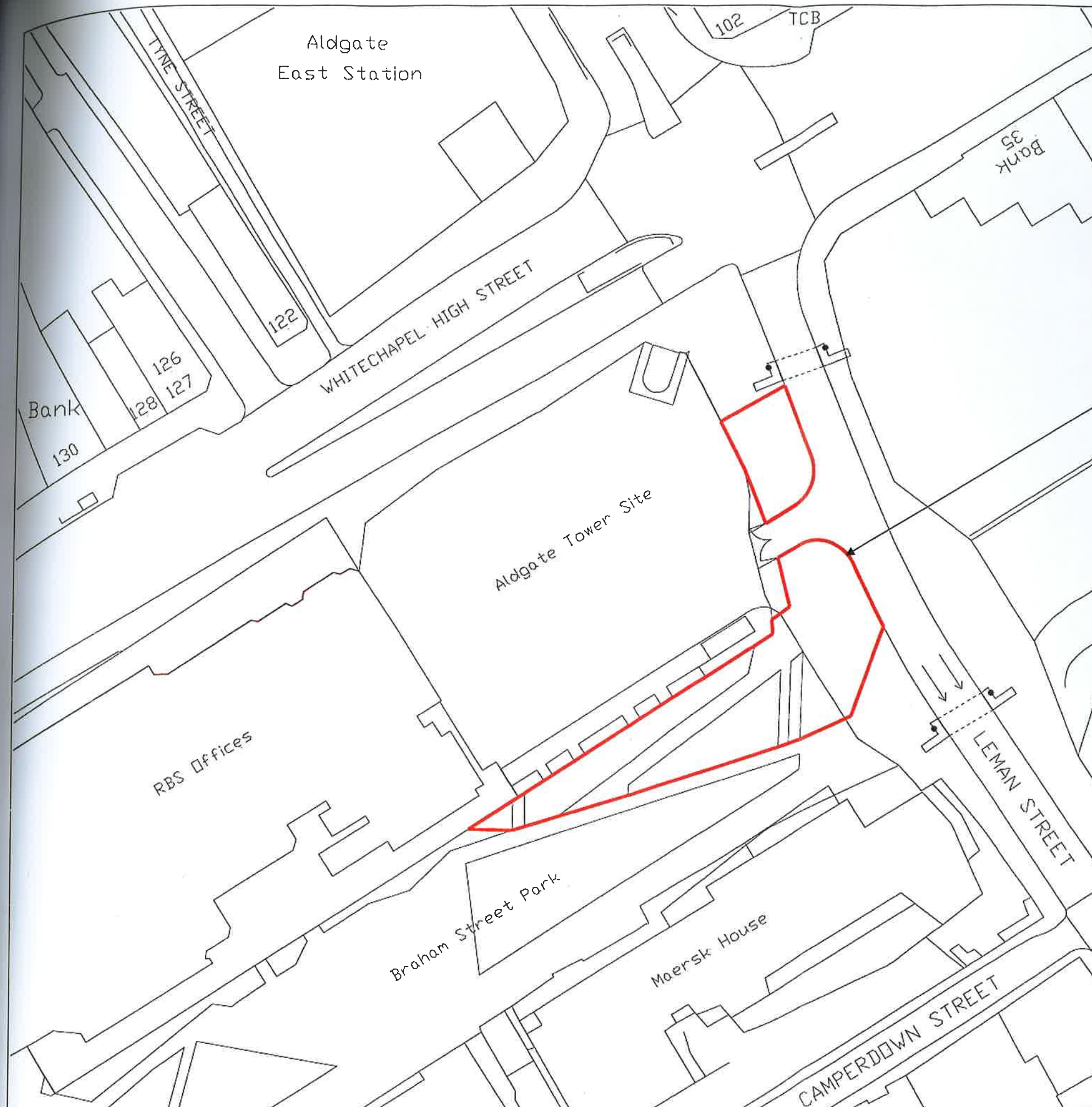


Affixed in the presence of _____
an Officer authorised by the Company

0643



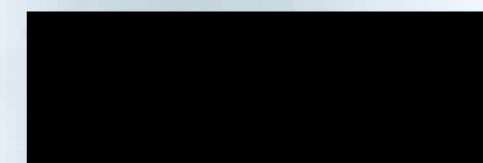
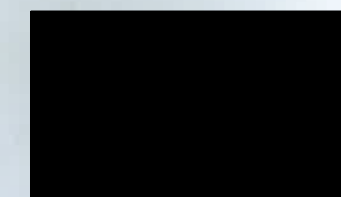
Drawing No. SRM/SK/17951/NR/1203011 Rev. 0



Aldgate Tower Section 278 Agreement

Boundary Plan

Red line indicates extent of
boundary for Section 278 works



Affixed in the presence of
an Officer authorised by the Company

0643



Drawing No. SRM/SK/17951/NR/1203011 Rev. 0