DLR ROLLING STOCK

 REPLACEMENT

PROJECT

**Annex 5**

**Process Agreement**

between

Docklands Light Railway Limited

and

*[Insert name of Applicant and Members∗]*

∗ This Agreement should be signed by the Applicant(s), and where the Applicant is a Consortium or SPV, by the Applicant and each Member. Separate copies of the Agreement may be signed by each party as a counterpart but the names of the Applicant(s) and all Members must be inserted above as parties to the same Agreement.

### AGREEMENT BETWEEN

1. **Docklands Light Railway Limited (“DLRL”)**, a company incorporated in England & Wales, having its registered office at Operations and Maintenance Centre, , Castor Lane, Poplar, London E14 0BL and whose registered number is 2052677.

### *AND*

1. ***[Insert name]*,** a company incorporated in ***[insert country of registration]*,** having its registered office at ***[insert registered details]*** and whose registered number is ***[insert registered number]*.**

### (‘the Applicant’)

***[Insert other Applicant parties and Members as required]\****

(the **“Members”,** each a **“Member”**)

(each a **“Party”** and together the **“Parties”**) ***WHEREAS:***

1. DLRL has issued a notice reference ***[Insert reference]*** in the Official Journal of the European Union announcing its intention to, *inter alia*, select a party to supply a fleet of new trains and provide technical support and spares supply to that fleet (the **“Project Services”**).
2. The Applicant has submitted a response to the Pre - Qualification Questionnaire for the Project Services.
3. DLRL possesses certain information relating to the Project Services which is of a confidential nature.
4. The Applicant will require access to such information for the purpose of formulating a DLR Proposal (as defined below) and negotiating (if selected to negotiate) with DLRL and other Beneficiaries (as defined below) for the entry into such contracts as necessary or desirable with the Beneficiaries and/or third parties in order to deliver the Project Services (the “**Agreed Purpose**”).
5. It is a condition of participating in the procurement process for the Project Services that the Applicant enters into this Agreement.

\* See footnote on previous page.

In consideration of the disclosure to the Applicant of the Confidential Information (as defined below) as may be disclosed during the course of the Procurement Process, the Applicant undertakes (on a joint and several basis as regards the Applicant and all Members (if more than one person)) to DLRL for the benefit of DLRL and each Beneficiary as follows:

### DEFINITIONS

In this Agreement the following expressions have the following meanings:

* + 1. **“Award Date”** means: (i) where the Applicant is not the successful bidder for the provision of Project Services, the date that the award of contract for the provision of Project Services is formally notified to the Applicant; or (ii) where the Applicant is the successful bidder for the provision of Project Services, the date that the contract for the provision of Project Services is completed and any conditions precedent to such contract coming into force have been satisfied in accordance with its terms;
		2. **“Agreed Purpose”** has the meaning given in recital (d) above;
		3. **“Applicant Information”** means all information of whatsoever nature whether oral, written or in any other form made available by the Applicant to DLRL, any other Beneficiary or their Representatives directly or indirectly as part of the content or terms of any DLR Proposal or any other information provided under Clause 2.1, provided always that information originating from a Beneficiary shall not constitute Applicant Information;
		4. **“Beneficiary**” means any of DLRL, Transport for London and other members of the TL Group, and any other nominee of DLRL or Transport for London notified to the Applicant in writing and “Beneficiaries” shall be construed accordingly;
		5. **“Business Day”** means any day on which the banks are generally open for business in the City of London, excluding Saturdays, Sundays and public holidays;
		6. **“Confidentiality Agreement”** means the company confidentiality agreement between DLRL and the Applicant relating to the supply and development of a technical proposal for the DLR Rolling Stock Replacement Project.
		7. “**Confidential Information**” means all information of whatsoever nature relating to the Project Services and/or relating to the DLR Rolling Stock Replacement Project generally and/or to the business or affairs of any Beneficiary (whether oral, written or in any other form) obtained by, or made available to, the Applicant or its Representatives directly or indirectly from any Beneficiary including without limitation, this Agreement, the documents comprised in or issued with the Pre-Qualification Questionnaire, the documents comprised in or issued with the Invitation to Negotiate, any information issued to the Applicant pursuant to the Confidentiality Agreement, all Data Site Information and all correspondence between the Applicant and the Beneficiaries and their respective Representatives and includes all documents or other information prepared by the Applicant or its Representatives which contain or reflect or are generated from any of the foregoing information;
		8. **“Data Site”** means the data site set up, or to be set up, by DLRL or its Representatives that relates to the Project Services.
		9. **“Data Site Information”** means any information which DLRL or its Representatives deposit in the Data Site.
		10. **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it, the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
		11. **"Group"** means in relation to any body corporate that body and its subsidiaries, subsidiary undertakings, holding companies and subsidiary or subsidiary undertakings of those holding companies (if any), in each case as defined in the Companies Act 2006 as amended;
		12. **“Intellectual Property”** means trade marks, service marks, trade names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, semi-conductor topography rights, database and all other similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;
		13. **“Invitation to Negotiate”** means the invitation to negotiate which DLRL intends to issue to selected Applicants following completion of the pre-qualification process as part of the Procurement Process;
		14. **“Member”** means, where the DLR Proposal is submitted by an SPV company, joint venture or consortium, a participant in such joint venture or consortium or any shareholder in the SPV company (provided that where the SPV’s shares are held by a holding company or companies set up for that purpose, the term “Member” shall include each shareholder in such holding company or companies);
		15. **“Pre-Qualification Questionnaire**” means the documents of the same name issued by DLRL pursuant to the Procurement Process of which the template form of this Agreement forms part;
		16. **“Procurement Process”** means the process to be carried out by DLRL (as may be varied from time to time) for the selection of a provider of the Project Services, including submission and evaluation of pre-qualifications, tenders and best and final offers (if required), the negotiation and finalisation of all contracts and agreements relating to the Project Services and any documents to be entered into under or in relation to such contracts or agreements;
		17. “**Project Services**” means the services which the successful bidder selected as a result of the Procurement Process will be contracted to provide, which may include (without limitation and subject to DLRL’s discretion) the intended design, manufacture, testing, commissioning and entry into passenger service of new rolling stock and the provision of technical support and spare supply services, as more particularly described in the Pre-Qualification Questionnaire and draft Invitation to Negotiate;
		18. **“Representatives”** means in relation to DLRL or any person its and its Group’s officers, directors, employees, advisers and agents; in relation to the Applicant or a Beneficiary providers or potential providers of finance to the Applicant or to a Beneficiary in connection with the Project Services; and, in relation to the Applicant, Members, subcontractors or potential subcontractors to the Applicant for the provision of Project Services and the Representatives of such providers or subcontractors;
		19. **“DLR Proposal”** means a proposal submitted by the Applicant in relation to the provision of the Project Services consisting of, or incorporated in, any pre-qualification submission, tender submission or best and final offer (if required), any clarifications or addendums to any of the foregoing or any other similar document or proposal (or any part thereof); and
		20. **"SPV"** means a special purpose vehicle being a company owned by a joint venture or a consortium or other combination of persons or by a single owner which is established solely for the purposes of tendering for and undertaking the Project Services.
		21. **“TfL Group”** means Transport for London and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to “any member of the TfL group” shall refer to Transport for London or any such subsidiary.

### PROVISION OF INFORMATION

* + 1. The Applicant shall, if and to the extent so requested by DLRL:
			1. provide DLRL and its Representatives with such information concerning a DLR Proposal, the Applicant, any Member or any member of the Applicant’s Group and their respective businesses as DLRL may require and shall present such information in such manner, including preparing such analyses and disaggregated presentations of information, as DLRL may reasonably require; and
			2. provide DLRL and its Representatives with reasonable access to the employees of the Applicant and any Member for the purpose of DLRL or its Representatives preparing any reports, analyses or other documents in connection with a DLR Proposal or any alternative proposals for the provision of the Project Services by any other person.

### UNDERTAKINGS BY THE APPLICANT

* + 1. The undertakings, acknowledgements and confirmations contained in this Agreement are given by the Applicant and by each Member for the benefit of DLRL and each of the other Beneficiaries. The Applicant and each Member acknowledges and agrees that DLRL is entering into these arrangements for itself and on behalf of each of the other Beneficiaries. Unless otherwise stated, the undertakings, acknowledgements and confirmations contained in this Agreement shall be binding on the Parties throughout the Procurement Process and for a period of 6 years following the Award Date unless otherwise expressly stated in the relevant Clause or otherwise agreed by the Parties in writing.
		2. In consideration of Confidential Information being made available to the Applicant and subject to Clauses 3.3 and 3.4 below, the Applicant and each Member hereby agrees and undertakes that it and its Representatives:
			1. shall keep secret and confidential all Confidential Information, supplied or made available to the Applicant or its Representatives and shall not, whether or not the negotiations proceed, disclose such Confidential Information to any person other than (i) such persons as DLRL may from time to time approve in writing; and (ii) the Applicant’s Representatives (subject to (c) and (g) below);
			2. shall not disclose to any person (other than the Applicant’s Representatives (subject to (c) and (g) below)) any information about the process or timing of a DLR Proposal or the processes associated with the Procurement Process generally nor any details relating to the status of the negotiations with DLRL or any third parties;
			3. shall not disclose any of such Confidential Information to any of the Applicant’s Representatives or any member of the Applicant’s Group except to those who need to know the Confidential Information to the extent strictly required for the Agreed Purpose;
			4. shall use all such Confidential Information solely for the Agreed Purpose;
			5. shall not make contact with any other prospective or potential Applicant for the Project Services or any of their Representatives in connection with a DLR Proposal without the prior written consent of DLRL;
			6. shall, on written demand from DLRL destroy or return any written Confidential Information provided to it or its Representatives without keeping any copies thereof and either hand over to DLRL or destroy all notes or memoranda or other stored information of any kind prepared by the Applicant or its Representatives relating to any of the Confidential Information or the negotiations and, if required by DLRL, provide written confirmation of compliance with this Clause 3.2 (f), provided that the Applicant shall not be required to return or destroy copies which are required to be retained by applicable law; and
			7. shall procure that any of the Applicant’s Representatives or any member of the Applicant’s Group to whom disclosure of such Confidential Information is made, is aware of and abides by the terms of this Agreement which relate to the Confidential Information, and in the case of any person who is not an officer or employee of the Applicant or Applicant’s Group, enters into a confidentiality agreement on equivalent terms to this Agreement in respect of the Confidential Information. The Applicant and each Member acknowledges and agrees that it shall be responsible for any breach of the confidentiality provisions of this Agreement by any of its Representatives to whom it or its Representatives has disclosed Confidential Information.
		3. The undertakings in Clause 3.2 above shall not apply to any disclosure of Confidential Information:
			1. required by any applicable law or by any supervisory or regulatory body to whose authority the Applicant (including its shares or securities) is subject or with whose rules it is necessary for the Applicant to comply; or
			2. which is in or subsequently comes into the public domain (unless as a result of a breach of this undertaking); or
			3. which is lawfully in the Applicant’s possession (as can be demonstrated by its written records) prior to its disclosure by a Beneficiary and was not acquired directly or indirectly from any Beneficiary; or
			4. to the extent expressly approved in writing by DLRL,

provided that should the Applicant or its Representatives become aware that it or they may become compelled by law or by any such supervisory or regulatory body to disclose any Confidential Information, prompt notice of that fact will be given to DLRL in writing so that it may seek an appropriate remedy to prevent such disclosure and the Applicant and its Representatives will take such steps as DLRL may reasonably require for that purpose and will keep DLRL promptly and fully informed of the details of the proposed disclosure and all developments relating to any such potential disclosure. The Applicant and each Member will ensure that any such disclosure will be limited to the minimum amount of Confidential Information required to satisfy any such disclosure obligation.

* + 1. The Applicant and each Member further acknowledges and confirms as follows:
			1. that any information made available to the Applicant or its Representatives prior to, in the course of, or for the purpose of, the Procurement Process, will not constitute an offer by or on behalf of, any Beneficiary, nor will any such information form the basis of any contract or agreement for the Project Services;
			2. that none of the Beneficiaries accept any responsibility or liability (other than in respect of fraudulent misrepresentation) for, or make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the Confidential Information or any oral communication in connection therewith;
			3. that neither the receipt of any Confidential Information nor any negotiations or discussion relating to the Project Services constitutes the giving of investment advice by any Beneficiary or the creation of a customer relationship with any Beneficiary; and
			4. that nothing in this Agreement constitutes any commitment by any Beneficiary to invite the Applicant to tender, to negotiate or to provide the Project Services and DLRL reserves the right to terminate, suspend or vary the Procurement Process at any time, and/or to disqualify the Applicant from the Procurement Process as provided in the Pre-Qualification Questionnaire, in each case without any liability for the Applicant’s costs.
		2. The Applicant and each Member warrants, represents and undertakes to DLRL and each of the Beneficiaries that, to the best of its knowledge:
			1. all the information, representations and other matters of fact communicated in writing to DLRL or any Beneficiary or their respective Representatives by the Applicant or any of its Representatives, in connection with the Project Services are, unless otherwise notified in writing to DLRL and accepted by it, accurate and not misleading in all material respects both as at the date communicated and as at the date of submission of any DLR Proposal;
			2. that the Applicant and each Member is acting as a principal on its own account and not as agent or broker for any other person(s) and will be responsible for any costs incurred by it on its behalf in connection with the Project Services; and
			3. it will inform DLRL in writing of any material change to any of the information, representations and other matters of fact communicated to DLRL or any Beneficiary or any of their respective Representatives as part of or in connection with a DLR Proposal and of any material change in circumstances which may affect the truth, completeness or accuracy of any information provided as part of or in connection with a DLR Proposal immediately upon becoming aware of such changes

### SPECIFIC PERFORMANCE

* + 1. The Applicant and each Member acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that, without prejudice to all other remedies to which they may be entitled as a matter of law, any Beneficiary shall be entitled to the remedies of interdict, injunction, specific implement, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement and no proof of special damages shall be necessary for the enforcement of this Agreement.
		2. In addition, DLRL reserves the right, in the event of any material breach of this Agreement by the Applicant, to eject the Applicant (or any Member or member of the Applicant’s Group) from the Procurement Process.

### INTELLECTUAL PROPERTY

* + 1. Disclosure of the Confidential Information does not imply or confer any licence or permission on the Applicant or any Member to use the Confidential Information for any purpose other than as set out and on the express terms contained in this Agreement. All Intellectual Property in the Confidential Information shall remain the property of DLRL or the Beneficiary by whom it is disclosed or their respective licensors.

### PUBLICITY

* + 1. The Applicant acknowledges that:
			1. the Procurement Process is of national significance within the United Kingdom and is likely to attract public and media attention; and
			2. such attention may have a materially adverse impact on the progress of the Procurement Process.
		2. The Applicant and each Member accordingly agrees that it shall not, and shall ensure that its Representatives do not, without the prior written consent of DLRL make any form of public statement or communicate with the media (whether in writing or orally) or issue any press notice or press release in relation to the Procurement Process, the Project Services or the DLR Rolling Stock Replacement Project.

### CORRUPT GIFTS

* + 1. The Applicant and each Member shall not, and shall procure that its Representatives shall not, directly or indirectly in connection with the Project Services:
			1. pay any sums; or
			2. grant any concession or benefit; or
			3. make any gift or provide any entertainment;

to any Representative of any Beneficiary nor enter into any business arrangement with any such Representative without the prior written approval of DLRL.

### ANTI COLLUSION

* + 1. Save as set out in Clause 8.2 the Applicant and each Member undertakes that it will not, and will procure that its Representatives will not, at any time prior to the Award Date:
			1. fix or adjust the amount of any payments proposed in connection with the possible provision of the Project Services by it under or in accordance with any agreement or arrangement with any other person; or
			2. communicate to any person other than as permitted by the terms of this Agreement the amount or approximate amount of any payments proposed as described in Clause 8.1(a); or
			3. enter into any agreement or arrangement with any person that they shall refrain from making any proposal in connection with the provision of the Project Services or that they should withdraw any such proposal once offered of any amount or vary the amount of any payments proposed or to be proposed; or
			4. pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other proposal in connection with the provision of the Project Services any of the aforementioned actions; or
			5. disclose to any other person except as permitted by this Agreement any other term or provision of a DLR Proposal.
		2. The provisions of Clause 8.1 shall not apply to the Applicant:
			1. to the extent that the Applicant or its Representatives communicate the approximate amount of any tender in confidence in order to obtain any insurance premium quotations in connection with a DLR Proposal; or
			2. to the extent that it is necessary in order to achieve the Agreed Purpose that the Applicant or any Member negotiates or enters into any subcontract which will form part of a DLR Proposal; or
			3. to the extent otherwise agreed in writing by DLRL.

### CODE OF CONDUCT

* + 1. The Applicant and each Member will not, and will procure that its Representatives do not, at any time prior to the Award Date or for a period of 6 months thereafter without the prior written consent of DLRL solicit or endeavour to entice away any Representative of a Beneficiary who participates in discussions with the Applicant in relation to the Procurement Process, or whom the Applicant otherwise knows or ought reasonably to know is involved in the Procurement Process, or any other applicant or potential applicant that the Applicant knows or ought reasonably to know is involved in the Procurement Process other than pursuant to a response to a bona fide public advertisement of an employment vacancy or the recruitment of a person through an employment agency provided that the Applicant does not encourage or advise such agency to approach any such person.
		2. The Applicant and each Member agrees that it will not, and will procure that its Representatives do not attempt to contact or interview or solicit information from any Representative of any Beneficiary in relation to the Procurement Process except as specifically permitted in the Pre-Qualification Questionnaire, Invitation to Negotiate or any other formal clarification or addendum issued by DLRL in relation to the Procurement Process or otherwise subject to the express written consent of DLRL (which may be given generally or specifically).

### MISUSE OF INFORMATION

* + 1. The Applicant and each Member acknowledges that:
			1. the Applicant and each Member or any other member of its Group may now or in the future be in a contractual or commercial relationship with DLRL in relation to matters other than the Agreed Purpose; and
			2. the disclosure of Confidential Information permitted under Clause 3 may result in the Applicant disclosing Confidential Information to its Representatives and other persons or organisations that are now or may in the future be in a contractual or commercial relationship with DLRL, in relation to matters other than the Agreed Purpose.
		2. The Applicant and each Member shall ensure that it, and shall procure that its Representatives, taking into account the circumstances described in Clause 10.1, shall:
			1. take all appropriate measures to ensure that all Confidential Information shall be used only for the Agreed Purpose; and
			2. keep all Confidential Information and work in relation to the Agreed Purpose distinct from other activities.

The methods used by the Applicant and its Representatives to ensure compliance with this Clause 10.2 shall include the use of secure storage of files, separate reporting arrangements and separate use of personnel. DLRL will be entitled to audit compliance with this Clause 10 and the Applicant and each Member shall provide or procure such information and access to such Representatives, documents, systems and premises as DLRL shall reasonably require for such audit.

### FREEDOM OF INFORMATION

* + 1. The Applicant and each Member acknowledges that the Beneficiaries are ‘public authorities’ for the purposes of the FOI Legislation and the Beneficiaries may, subject to any applicable exemptions, be required to disclose Applicant Information where required under the FOI Legislation.
		2. The Applicant and each Member shall comply with all requests by a Beneficiary for the purpose of enabling that Beneficiary to comply with its obligations under the FOI Legislation, and provide all assistance and information as may be required by that Beneficiary for such compliance.
		3. Without Prejudice to Clause 11.1, if a Beneficiary receives a request under the FOI Legislation which may require disclosure of Applicant Information, DLRL shall, or shall insofar as it is reasonably practicable to do so taking into account DLRL’s relationship with such Beneficiary, procure that the relevant Beneficiary shall, as soon as is reasonably practicable, send written details of the request to the Applicant. Without prejudice to any other rights the Applicant may have and unless prohibited from doing so by any court of competent jurisdiction or statutory authority, and notwithstanding any other provision of this Agreement, DLRL shall, or shall insofar as it is reasonably practicable to do so taking into account DLRL’s relationship with such Beneficiary, procure that the relevant Beneficiary shall:
			1. give the Applicant the opportunity to make representations to DLRL or the relevant Beneficiary as to the reasons why the Applicant is of the opinion that the information requested (or any part of it) should not be disclosed; and
			2. to the extent received by DLRL or the relevant Beneficiary as soon as reasonably practicable after such details are sent, take account of such representations from the Applicant in coming to a decision as to whether to disclose such information.

### RELATIONSHIP WITH PROCUREMENT DOCUMENTS

* + 1. This Agreement is to be read in conjunction with, and is without prejudice to, the Pre-Qualification Questionnaire and Invitation to Negotiate.

### WAIVER AND INVALIDITY

* + 1. No failure or delay by any Party or any Beneficiary in exercising any right, power or privilege under this Agreement shall constitute a waiver thereof nor shall any single or partial exercise thereof preclude further exercise thereof or the exercise of any right, power of privilege hereunder or otherwise.
		2. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Beneficiary such prohibition or unenforceability will not invalidate the remaining provisions or affect the validity or enforceability of the provisions in relation to any other party or any other jurisdiction.

### CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

* + 1. Subject to Clause 14.2, a person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (the “Third Parties Act”) to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from the Third Parties Act).
		2. Any Beneficiary who is not a Party to this Agreement may enforce the terms of this Agreement expressed to be for the benefit of or given by the Applicant to or in favour of such Beneficiary.
		3. All terms of this Agreement may be varied, amended or otherwise released by an agreement in writing between DLRL, each Member who is a party to this Agreement and the Applicant without reference to any Beneficiary.

### ASSIGNMENT

No Party shall be entitled to assign any rights or obligations under this Agreement save that DLRL shall be entitled to assign or novate its rights and obligations under this Agreement to a Beneficiary and the Applicant and each Member shall execute all such documents and do all such things as are reasonably necessary to give effect to such assignment or novation.

### JOINT AND SEVERAL LIABILITY

The Applicant and all Members shall be jointly and severally liable for the performance of obligations conferred on the Applicant and/or any Member under the Agreement.

### GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law, and the parties hereby submit to the exclusive jurisdiction of the English Courts.

**AS WITNESS** this Agreement has been duly executed by the parties hereto the day and year before written.

SIGNED for and on behalf of:

### Docklands Light Railway Limited by:

AUTHORISED SIGNATORY

Date:

SIGNED for and on behalf of :

#### [insert Applicant's name]

#### by:

AUTHORISED SIGNATORY

Date:

#### [Insert additional signature blocks as required for other parties comprising the Members]\*

\* See footnote on front page of Agreement