



FRANCHISE AGREEMENT VARIATION NUMBER FIVE (5) between:

- (1) The **SCOTTISH MINISTERS** Victoria Quay, Edinburgh, EH6 6QQ ("**Scottish Ministers**"), acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Executive as they may from time to time nominate (who and whose successors are referred to as the "**Authority**"); and
- (2) **SERCO CALEDONIAN SLEEPERS LIMITED**, a company registered in Scotland and whose registered number is SC477821 and registered office is at 1-5 Union Street, Inverness, IV1 1PP (the "**Franchisee**").

BACKGROUND

- (A) In terms of an agreement consisting of the Franchise Agreement, Conditions Precedent Agreement, Definitions Agreement and SQUIRE Service Schedules Agreement each made between the Scottish Ministers and the Franchisee last subscribed on 10 June 2014 the Scottish Ministers appointed the Franchisee to provide railway passenger services within the scope of the "Caledonian Sleeper" franchise as amended by VO1 and VO2 dated 19 November 2015 (the "**Agreement**").
- (B) The Agreement included a specification for the New Train Fleet which was mirrored in a Manufacturing Services Agreement entered into *inter alia* between the Franchisee and the manufacturer and a financing party ("**MSA**"). As envisaged by the Agreement (specifically as noted in paragraphs 1.2 to 1.5 of Schedule 6.1A), during a detailed design process involving the Authority and the parties to the MSA, the specification and requirements in the MSA for the New Train Fleet have been (or will be) changed or refined by MSA variation orders ("**MSA VOs**") and consequently changes are required to be made to the Agreement to reflect the new requirements and responsibilities as regards the MSA VOs and delivery of the New Train Fleet by the Franchisee in terms of the Agreement.
- (C) The Franchisee and the Authority (on behalf of Scottish Ministers) have agreed to amend the Agreement as set out in this Variation Number 5 pursuant to paragraph 1.1(b) of Schedule 9 of the Franchise Agreement.

THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:-

1. Definitions

All defined terms used in this Variation and its appendices (which are incorporated herein) shall have the meanings set out in the Agreement save as otherwise set out in this Variation.

2. Commencement and Effect of Variation

- 2.1. This Variation shall take effect on the last date of signing of the last of the MSA VOs numbered VO7, VO8, VO9, VO10, VO12, VO14, VO15, VO19, VO20, VO 21, VO22, VO23, VO24, VO27, VO28, VO30, VO31, VO32, VO33, VO35, VO36 and VO41 (a copy of each of which VOs comprises Appendix 4 annexed and identified as relative to this Variation) as intimated by the Franchisee to the Scottish Ministers by way of an email from Victoria Moore (Legal Counsel and Contracts Manager, Caledonian Sleeper) to Peter Lloyd (Caledonian Sleeper Franchise Manager, Transport Scotland) which email



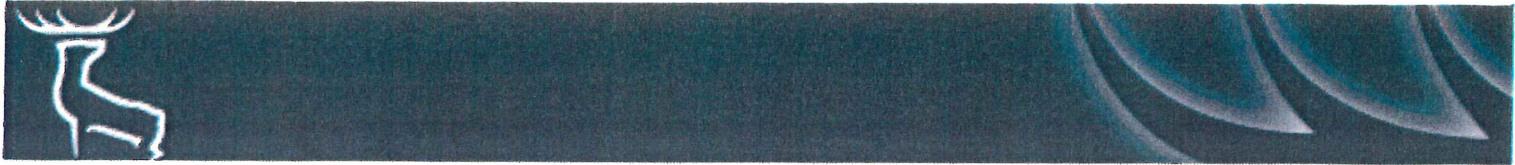
shall (a) list the VOs and confirm that the VOs have been authorised and accepted in accordance with the MSA, and (b) contain a scanned copy of signed versions of each of the VOs referred to in this clause 2.1 (“Effective Date”).

2.2. Save as provided herein the remaining terms of the Agreement continue in full force and effect. This Variation is supplemental to and shall be construed together with the Franchise Agreement, Conditions Precedent Agreement, Definitions Agreement and SQUIRE Service Schedules Agreement.

3. Variations

The parties acknowledge that the Agreement is hereby amended as follows:

- 3.1. Schedule 6.1 and 6.1A of the Franchise Agreement shall be deleted and replaced with the substitute Schedule set out in Appendix 1 annexed and identified as relative to this Variation; and
- 3.2. Schedule 6.3 of the Franchise Agreement shall be deleted and replaced with the substitute Schedule set out in Appendix 2 annexed and identified as relative to this Variation; and
- 3.3. The Agreement shall further be amended as set out in Appendix 3 annexed and identified as relative to this Variation.



4. Financial Implications

4.1 The Parties agree that notwithstanding that this Variation constitutes a "Variation" as defined within the Definitions Agreement it does not constitute a Change and it shall not constitute a Change for the purposes of paragraph 4 of Schedule 9.1 of the Franchise Agreement should there be any other Changes in the Franchisee Year in which the Effective Date occurs.

IN WITNESS WHEREOF these presents consisting of this and the two (2) preceding pages together with the four (4) Appendices annexed and identified as relative hereto are executed as follows:

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At *Glasgow*

On the *27th* day of *January* 2016 2017

By [Redacted]

[Redacted] Name (printed)

Before this witness:-

[Redacted] Witness

[Redacted] Full Name

[Redacted] Address

Signed for and on behalf of SERCO CALEDONIAN SLEEPERS LIMITED

At

On the *27th* day of *January* 2016 2017

By [Redacted]

[Redacted] Director

[Redacted] Name (Printed)

Before this witness:-

[Redacted] Witness

[Redacted] Name

[Redacted] Address