

5th SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED
as Network Rail

and

CALEDONIAN SLEEPER LIMITED
as Train Operator

relating to the administrative amendments required within the Track Access Contract to reflect the transfer of the franchise from Serco Caledonian Sleepers Limited to Scottish Rail Holdings (operating as Caledonian Sleeper Limited)

THIS 5th SUPPLEMENTAL AGREEMENT is dated **03 July 2023** and made

BETWEEN

- (1) **Network Rail Infrastructure Limited**, a company registered in England under number 2904587, having its registered office at having its registered office at Waterloo General Office, London, SE1 8SW ("**Network Rail**"); and
- (2) **Caledonian Sleeper Limited**, a company registered in Scotland under company number SC328825, having its registered office at Basement and Ground Floor Premises, 1-5 Union Street, Inverness, Scotland, IV1 1PP (the "**Train Operator**").

Background:

- (A) The Train Operator and Network Rail entered into a Track Access Contract (Passenger Services) (which is hereafter referred to as the "Contract") dated 2 March 2018 in a form approved by the Office of Rail and Road pursuant to section 18(7) of the Act, as amended by various supplemental agreements (which track access contract as subsequently amended is hereafter referred to as the "Contract").
- (B) On 25 June 2023 the rights and obligations of Serco Caledonian Sleepers Limited under the Contract were transferred to the Train Operator pursuant to a transfer scheme made by Scottish Ministers under Schedule 2 of the Railways Act 2005.
- (C) Network Rail and the Train Operator (the Parties) now propose to enter into this Supplemental Agreement in order to amend the Contract as described herein.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

In this Supplemental Agreement:

- 1.1 Words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise;
- 1.2 "Effective Date" means 25th June 2023.

2. EFFECTIVE DATE AND DURATION

The amendments made to the Contract pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect at 2359 hours on the Expiry Date or earlier termination of the Contract.

3. AMENDMENTS TO THE AGREEMENT

The front end of the contract will be updated to remove all references of Serco Caledonian Sleepers Limited and reflect the new business name for the operator, Caledonian Sleeper Limited, as well as the new Network Rail business address.

The definition of “Franchise Agreement”, will be changed to “Grant Agreement” and have the following meaning “means the Grant agreement with Scottish Ministers referred to in Schedule 3;”

The term “Franchise Agreement” will be replaced with “Grant Agreement”, throughout the document.

The definition of “Franchisee” will be replaced with “Grantee” and have the following meaning “means the person defined as such in the Grant Agreement;”

The term “Franchisee” will be replaced with “Grantee”, throughout the document.

In Schedule 1, Part 1 will be updated to the new Network Rail Business address and Part 2 will be updated to contain the correct contact details for The Train Operator’s address for the service of notices, following the transfer of the franchise.

Schedules 1,2, 3, 4, 5, 6, 7, 8, 9 and 10 will have their titles updated to remove references to Serco Caledonian Sleepers Limited and reflect the new business name for the operator, Caledonian Sleeper Limited.

Schedule 3, clause 3 will be amended to read “A Grant Agreement between (1) the Grantee and (2) the Scottish Ministers under the Act under which the Grantee undertakes to provide or procure the provision of all or a material part of the Services.”

Schedule 7’s title currently contains an error in that it references Abellio Scotrail Limited. This will be corrected to read ‘This is Schedule 7 Referred to in the foregoing Track Access Agreement between Network Rail Infrastructure Limited and Caledonian Sleeper Limited.’

In Schedule 7, Part 2, there are two paragraph’s 9. The second paragraph 9 will be changed to paragraph 10 to correct this typing error.

4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT

The Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect all references in the Contract to “the contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

5. LAW

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the laws of Scotland.

6. THIRD PARTY RIGHTS

No rights shall be conferred under or arising out of this Supplemental Agreement on any person other than the Parties to this Supplemental Agreement and there shall not be created in any circumstances a jus quaesitum tertio in favour of any person.


7. COUNTERPARTS

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF this Supplemental Agreement comprising this and the foregoing 3 pages and Appendix A are executed as follows:-

SIGNED on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED** by
at on in the
presence of:-

Witness: 

Full Name: ALEXANDER MIDDLETON 

Address: WATGROOD GENERAL OFFICES 2/7/23
LONDON
SE1 8SW

SIGNED on behalf of **CALEDONIAN SLEEPER LIMITED** by Kathryn Darbandi at Tara House, Glasgow on Wednesday 30th June 2023 in the presence of:-

Witness: 

Full Name: Graham Kelly... 

Address: C/O 46 Bath Street, Glasgow, G2 1HG