

8 January 2020

Alexis Streeter  
Network Rail

Dear Alexis,

**Schedule 8: Our approval of the baseline annual contract mileages for freight operators**

1. We refer to your email of 27 August 2019, in which you asked us to approve freight operators' Baseline Annual Contract Mileage for Control Period 6 (CP6)<sup>1</sup>. This letter sets out our approval of the Baseline Annual Contract Mileage for freight operators in respect of the freight operator Schedule 8 regime for CP6.

**Background**

2. In the freight operator Schedule 8 regime, freight operators and Network Rail have reciprocal annual caps on the net annual liability they face under the Schedule 8 performance regime.
3. The purpose of the annual caps is to provide certainty to freight operators and Network Rail on their maximum Schedule 8 liability for any year, without removing incentives and compensation for operators on events within 'normal' bounds<sup>2</sup>.
4. In paragraph 10.2 of Schedule 8 in the freight operator track access model contract it states that each freight operator's Baseline Annual Contract Mileage is compared to the number of contract miles operated by the freight operator in that financial year ('Annual Contract Mileage'). If the difference between a freight operator's Annual Contract Mileage and its Baseline Annual Contract Mileage is equal to or greater than 2.5%, the reciprocal annual caps will be reviewed and Network Rail can propose a new annual cap.
5. The Baseline Annual Contract Mileage for each freight operator is the actual train mileage it has been billed for in the last financial year of CP5, i.e. (2018-19). This

---

<sup>1</sup> CP6 runs from 1 April 2019 to 31 March 2024.

<sup>2</sup> We consider an event to be outside 'normal' bounds if there was no way to expect it at the start of the control period, so Network Rail or freight operators could not be expected to plan for it.

figure is a total of the FOC's contract mileage<sup>3</sup> for its permanent services and the actual train mileage incurred for non-permanent services.

6. At the time of ORR issuing the CP6 review notices, Network Rail could not provide us with the Baseline Annual Contract Mileage for each freight operator as it required freight operator mileage data up to and including March 2019. As a result, it was agreed that ORR would approve the Baseline Annual Contract Mileage after the start of CP6. We included wording in each freight operator's contract allowing us to do this.

### Proposed Baseline Annual Contract Mileage

7. The Baseline Annual Contract Mileage for each freight operator that the freight and charter Schedule 8 recalibration working group asked us to approve is set out below in Table 1.

**Table 1: Freight operator Baseline Annual Contract Mileages**

Freight operator	Baseline Annual Contract Mileage
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

8. In your 27 August 2019 email, you explained that the Baseline Annual Contract Mileages in Table 1 are each freight operator's train mileage in 2018-19 and that

---

<sup>3</sup> The contract mileage is set out in the Rights Table in Schedule 5 of the FOC's Track Access Contract.

no party has objected to the proposed recalibration of the Baseline Annual Contract Mileage.

9. In addition, you explained that each freight operator has been consulted on its Baseline Annual Contract Mileage. Also, you have provided the correspondence you had with each freight operator, which demonstrated that it was made clear to freight operators by Network Rail that not responding to the correspondence would be taken as an implicit agreement to the proposed Baseline Annual Contract Mileage. In the event, not all operators did respond, but while we do not take a non-response as an expressed agreement, we are satisfied with how Network Rail has conducted its consultation.

#### **ORR's view**

10. Based on the approach you have used to calculate the proposed Baseline Annual Contract Mileage for each freight operator and the engagement you have had with operators, we approve the Baseline Annual Contract Mileages shown in Table 1, for each freight operator.
11. Additionally, we are satisfied with the method (see paragraph 5) applied in calculating the proposed Baseline Annual Contract Mileage for each freight operator as this method reflects actual train mileage, i.e. the actual mileage run by freight operators during the last financial year. We can therefore confirm that we will no longer need to determine this method for new contracts.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carl Hetherington', written in a cursive style.

**Carl Hetherington**