



Department
for Transport

XC Trains Limited
5th Floor, Cannon House
18 The Priory Queensway
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Attention: Interim Managing Directors
Julian Edwards & Scott Maynard
CC: [REDACTED³], Head of Strategy

Dear Julian and Scott

IN RESPECT OF THE NATIONAL RAIL CONTRACT ENTERED INTO DATED 19 September 2023 (THE “RAIL CONTRACT”) BETWEEN THE SECRETARY OF STATE FOR TRANSPORT (THE “SECRETARY OF STATE”) AND XC TRAINS LIMITED (THE “OPERATOR”)

NOTICE OF ‘LIKELY CONTRAVENTION’ PURSUANT TO CHAPTER 9.4.3 OF THE RAIL CONTRACT - ‘REMEDIAL PLAN NOTICES’

1. Words and expressions defined in the Rail Contract have the same meaning when used herein unless the context otherwise implies.
2. By e-mail dated 15 March 2024, the Secretary of State previously granted the Operator a derogation in relation to an amended Easter Timetable operating from 29 March to 1 April 2024.
3. Following the previous derogation, the Operator has now notified the Secretary of State on 3rd July 2024 that it is likely to fall below the Breach Performance Level and Default Performance Level relating to the Enforcement TOC on Self

¹ 18 November 2024 (Date of Redactions Approval) (CCT 4760472) Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

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Date: 26 July 2024

Cancellations Benchmark during one or more of Reporting Periods 2505, 2506, 2507 and 2508 (“**Relevant Period**”).

4. If this failure were to occur it would constitute a contravention of the Rail Contract pursuant to paragraph 8.2 of Chapter 4.4 (“**Relevant Terms**”).
5. Based on the information provided by the Operator, the Secretary of State is satisfied that the Operator is likely to contravene the Relevant Terms.
6. Accordingly, the Secretary of State is serving this written notice (“**Remedial Plan Notice**”) upon the Operator, requiring the Operator to provide an appropriate plan, by no later than 1200 on 2nd August 2024 for the purpose of securing ongoing compliance with the Relevant Terms of the Rail Contract and ensuring that the Operator's performance against the relevant Enforcement Benchmark will be better than the Breach Performance Level relating to such Enforcement Benchmark (“**Remedial Plan**”).
7. The Operator is expected to use all reasonable endeavours to agree a Remedial Agreement with the Secretary of State by 9th August 2024 as set out in paragraph 5.1 of Chapter 9.4.3 of the Rail Contract.

Remedial Plan Contents

8. The Secretary of State requires the Remedial Plan proposed by the Operator to include the following:
 - a. full details of the 'resilience timetable' which the Operator intends to operate during the Relevant Period (“**Resilience Timetable**”), together with an associated document detailing clearly which Passenger Services, by day of the week, will be not operated as part of the Resilience Timetable;
 - b. a plan to ensure that passenger demand and crowding are appropriately managed across each of the Routes during the Relevant Period including but not limited to:
 - i. consideration of crowding impacts on the Passenger Services and on adjacent services provided by other operators on the Routes across the week. including mitigating actions to be taken by the Operator to such crowding (e.g. supplementary buses), how it will monitor the effectiveness of these actions and how it will work with other operators;
 - ii. this should include consideration of crowding impacts resulting from reasonably expected changes in demand during the Peak and during off-Peak times, as a result of seasonal variations or special events taking place on or near one or more of the Routes; and
 - iii. a requirement to provide details to the Secretary of State of times, dates and locations when train staff report to the Operator's control that crowding is such that passengers are unable to board Passenger Services, such information to be provided at a level of detail as requested by the Secretary of State.

- c. a detailed plan setting out the steps the Operator will take to ensure sufficient driver availability over the short and medium-term including:
- i. full details of the training programme and 'Traincrew Resilience Strategy' that will deliver each of the objectives set out at paragraphs 3.1.3 and 3.1.4 of the Summer Resilience Timetable Submission dated 12th July 2024 to reduce the backlog in driver training. Such details shall include the number of driver training days delivered, disaggregated by individual driver depots. This will be presented on a Reporting Period-by-Reporting Period basis for regular monitoring purposes and at a level of detail as requested by the Secretary of State;
 - ii. full tabular and graphical projections, on a period-by-period basis, of the Operator's driver position on a depot-by-depot basis until March 2025 including, but not limited to, establishment FTE requirement, qualified FTE drivers, productive FTE drivers, trainers and leavers. The Operator will also provide Qualified FTE to Establishment and Productive FTE to Establishment indicators and any other reasonable data requested by the Secretary of State.
 - iii. details of how the Operator plans to restore the full timetable by 10th November 2024 and ensure the level of TOC on Self Cancellations on and from 10th November 2024 are at or better than the Breach Performance Levels.
 - iv. a projection of the number of daily TOC on Self Cancellations from the start of the Remedial Plan to Friday 14th March 2025, assuming that a Rest Day Working (**RDW**) agreement is reached.
 - v. further details of the impact of their plan for services and training under a situation where no RDW agreement is reached, including providing a projection of daily TOC on Self Cancellations from the date the existing RDW agreement expires to Friday 14th March 2025.
 - vi. The Operator should clearly detail their main assumptions for all of their projections. At a minimum, this should include driver turnover rate, driver sickness levels and driver leave.
- d. a requirement for the Operator and the Secretary of State to hold formal reviews at least each Reporting Period to monitor the Operator's performance against the Remedial Plan and to assess the Operator's progress in meeting its target. The Secretary of State shall have the right to request meetings with the Operator regarding progress of the Remedial Plan at any point, provided reasonable notice is given to the Operator.
- e. the right for the Secretary of State to hold a formal review of the Operator's performance by 15th March 2025, in order to assess whether sufficient progress has been made in the following areas: driver training days delivered, TOC-on-Self Cancellations and various driver FTE to establishment ratios. At this point, provided that the Secretary of State is reasonably satisfied with the Operator's performance against the Remedial Plan, the Secretary of State will, as part of the 2025-26 Annual Business Plan process, seek to finalise updated benchmarks.

9. Notwithstanding any agreement by the Secretary of State to the Resilience Timetable:
 - i. the Operator shall receive no fee in respect of the TOC-on-Self Cancellations Operational Performance Component;
 - ii. the Operator's performance in respect of the All Cancellations Operational Performance Component shall be deemed to be greater than the Expected Fee Performance Level B for the purpose of calculating the fee applicable to such component
 - iii. in each case, during the period in which the Passenger Services are operated in accordance with the Resilience Timetable.
10. Notwithstanding any provision of the Rail Contract, the implementation of the Resilience Timetable shall not constitute a Trigger Event or a ROM Benchmark Amendment Event.
11. A copy of this letter shall be placed on the Department's Contract Management System (CMS) for essential record keeping and to monitor ongoing compliance, in line with our obligations under the Rail Contract.
12. The Secretary of State may choose to publish a copy of this or future 'Remedial Plan Notice' letters with passenger facing/impacting contraventions on the Rail Public Register where it is deemed in the public interest and/or when publication would be in line with our other contract publication activities, although there is no legal obligation to do so.
13. This notice is without prejudice to any action the Secretary of State may take in relation to any other contravention of the Rail Contract, including the likely contraventions referred to herein.

Yours sincerely,

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| SIGNED FOR AND ON BEHALF OF The Secretary of State for Transport | [REDACTED ⁴] |
| Print Name of Authorised Signatory: | Eddie Muraszko |
| Position: | Market Lead |
| Date: | 26th July 2024 |

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