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04 October 2011

Dear,

## **BREACH NOTICE PURSUANT TO CLAUSE 7.1 OF THE SERVICES AGREEMENT**

**Services Agreement (“the Services Agreement”) dated 13 November 2009 between the Secretary of State for Transport (“the Secretary of State”), Directly Operated Railways Limited and East Coast Main Line Company Limited (“ECMLCo”).**

ECMLCo has contravened the Cancellations Benchmark regime contained in Schedule 7.1 of the Terms (the “Relevant Terms”) by exceeding the Breach Performance Level in respect of Cancellations and Partial Cancellations as set out in Appendix 5 (Cancellations Benchmark Table) to the Franchise Agreement for Reporting Period 1205 (the “Contravention”).

ECMLCo is hereby required to use all reasonable endeavours to remedy the above Contravention and to propose to the Secretary of State such steps as ECMLCo considers appropriate for the purpose of securing or facilitating compliance with the Relevant Terms by preparing a **Remedial Plan** setting out the following:

- (a) an explanation of the reasons for the Contravention;
- (b) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Terms;
- (c) the time period within which ECMLCo proposes to implement those steps; and
- (d) the performance levels against which ECMLCo proposes it is measured during the period of the Remedial Plan, showing the total number of proposed Cancellations and Part Cancellations for each Reporting Period and the estimated number of services in the Plan of the Day from and including period 1207.

We have received an Improvement Plan dated 21 July 2011 in respect of Cancellations, and subsequently a letter dated 28 July 2011 proposing the permanent revision of the contracted benchmarks. We do not accept that the reasons set out in this letter are sufficient grounds for permanently changing the Cancellations Benchmarks. However, as previously discussed, we are willing to consider temporarily revising the Cancellations Benchmarks as part of an agreed Remedial Plan, if satisfactory evidence is provided to support the proposed performance levels.

I recognise that the ECMLCo team has already examined the options for improving the level of Cancellations, and therefore do not believe the provision of a Remedial Plan should constitute a particular burden on ECMLCo. I would emphasise that, if the Department is to consider the temporary revision of benchmarks under a Remedial Plan, this will be a Ministerial decision for which reasonable supporting evidence will be required. Please do not hesitate to contact me if you wish to discuss what this might entail in order that expectations can be set and unproductive work avoided.

ECMLCo is therefore required to submit a Remedial Plan as a matter of urgency, but in any case no later than 30 October 2011.

Yours sincerely,

Divisional Manager, North