

Cross Industry Remote Condition Monitoring Agreement – Standard Form

How to use this Agreement

19 February 2014

This note provides some guidance on how to use the Cross Industry Condition Monitoring Agreement Standard Form. The Standard Form also contains some footnotes and other explanatory notes to enable parties to customize the agreement for their use.

When should this document be used?

This document is intended to facilitate a commercial Agreement of principles already agreed by the parties in a heads of terms arrangement, having gone through the business process maps provided by the RSSB under the T1010 research project (Cross-Industry Remote Condition Monitoring Programme: Phase 2).

The parties are referred to the following documents (also forming part of a suite of to facilitate a commercial agreement) in the following order:

1. Business process maps
2. [Output from T1010-01]
3. Data Sharing Commercial Principles
4. This guidance note
5. The Cross Industry Remote Condition Monitoring Agreement [standard form]

The Agreement is not a straitjacket and it is unlikely that it could be entered into in its current form. Instead, it provides a legal framework for the parties to arrive at an Agreement, as well as pointers and aide memoires of the sorts of issues that will need to be resolved. It is noted that the parties are not required to use this document and may choose, for example, not to use the format where a party is collecting data as part of its usual course of business. Nonetheless, the template Agreement can be versatile and used, potentially, multiple times in any one project – if appropriate, for example, by acceding new parties seeking to join an existing Remote Condition Monitoring scheme.

It is envisaged that there may be a number of parties involved in a Cross Industry Remote Conditioning Monitoring Project – but not all of these parties will be required to enter into a commercial agreement. This document may not need to be used if there is another commercial agreement between the parties, however, the parties may decide to use elements of this Agreement within their other arrangements and/or use this Agreement as a prompt for the issues that need to be considered.

We note that this agreement is currently drafted to provide bilateral or multiparty access to data and does not envisage cloud storage of data and would need to be adapted (although not re-written) to provide for that eventuality.

Who should use this agreement?

Below is a table which sets out some examples of circumstances in which parties may wish to use this agreement and, depending on the parties to the agreement, what role may be suitable for them.

Description of Remote Condition Monitoring project	Likely parties to be involved	Which Role in the Agreement?
Network Rail would like some equipment fitted to a train to monitor the condition of the infrastructure (e.g. track or overhead lines) (examples being forward facing CCTV)	Network Rail Train Operator ROSCO/Owner Train Maintainer	Primarily, this agreement will be between Network Rail (as Beneficiary) and the Train Operator or ROSCO (as Facilitator). The ROSCO and/or the Train

Description of Remote Condition Monitoring project	Likely parties to be involved	Which Role in the Agreement?
	Third party equipment provider	<p>Maintainer may be a party if it wishes to access some of the data, however, as there are existing relationships between the ROSCO/Maintainer and TOC in relation to the train, this could be achieved through those documents/relationships.</p> <p>A ROSCO may also need to be involved to the extent that it requires engineering change to a vehicle to facilitate the attachment of any Equipment.</p> <p>A third party equipment provider could be party to this agreement (and take on the obligations of the Facilitator in relation to Clauses 2 and 3) or this could be back to backed.</p>
A Maintainer or ROSCO would like to have something installed on its train to monitor the performance of the train, with the equipment being provided by a third party supplier.	ROSCO/Maintainer Third Party Supplier	The agreement would be between the ROSCO/Maintainer (as Beneficiary) and the Third Party Supplier (as Facilitator).
A Train Operator, Maintainer or ROSCO would like some equipment fitted to Network Rail's infrastructure to monitor the condition of the train and/or wheel/rail interface. Alternatively, Network Rail may wish to install some equipment to monitor the condition of the train and to offer this service to Train Operators.	Train Operator/ Maintainer/ROSCO Network Rail Third Party Equipment Provider	<p>Primarily, this agreement will be between the Train Operator/Maintainer/ROSCO (as Beneficiary) and Network Rail (as Facilitator).</p> <p>A third party equipment provider could be party to this agreement (and take on the obligations of the Facilitator in relation to installation and operation etc. in Clauses 2 and 3) or this could be back to backed into a separate arrangement. There may also need to be arrangements (outside of this agreement) relating to access to the network for installation, maintenance, repair and renewal of any equipment.</p>
A party would like access to Data from Equipment which is already fitted to the infrastructure and/or to a train.	<p>Third party data access</p> <p>If equipment is on infrastructure – Network Rail</p> <p>If equipment is on rolling stock – Train Operator, ROSCO, Maintainer</p>	<p>In this case, the provisions relating to installation of equipment would be redundant and could be removed. The parties would focus on the data ownership and provision.</p> <p>The Facilitator would be the party that controls the equipment. The Beneficiary would be the party accessing the relevant Data.</p>
A university would like to install	University	In this case, either Network Rail or

Description of Remote Condition Monitoring project	Likely parties to be involved	Which Role in the Agreement?
some equipment on the track and/or train and retrieve any data from that equipment to undertake further study	Network Rail/Train Operator, ROSCO, Maintainer	one (or more) of the Train Operators /ROSCOs/ Maintainers would act as a Facilitator (which may be required, for example, as the University would not have a safety case for access to the network). The University would have elements of both the Facilitator and the Beneficiary – as it would both be installing and maintaining equipment as well as accessing data. More extensive amendments would need to be made for this arrangement, although many of the clauses can be used and adapted and many of the principles will remain the same.

Further notes to assist use

Clause Reference	Notes
Parties	The standard form is intended to be used by a least two parties, but can be expanded to cover more, for example in a complex arrangement. The parties' names of "Facilitator" and "Beneficiary" can be adjusted to suit the circumstances.
Recitals: General	The standard form envisages that there will be Equipment fitted to provide Data. If this is not the case, the recitals should be amended and Clauses 2 and 3 of the Agreement may not be needed.
Asset Protection Agreement (Definition)	An Asset Protection Agreement will only be needed if Equipment is being fitted onto Network Rail's network. The parties should consider if further agreements (or amendments to existing agreements, for example, rolling stock leases) are needed if Equipment is fitted elsewhere.
Equipment (Definition)	The Agreement allows for either one party to fit Equipment or different parties to fit different Equipment. Details of responsibilities should be included in the Schedules. Escrow arrangements should also be included in the Schedules.
Warranty (Clause 6)	No warranties are given by either party in relation to the Equipment, Data or otherwise. If warranties are intended, provision should be made in the Schedules.
Confidentiality (Clause 9)	The parties should review these provisions in each case to ensure that information and Data provided is adequately protected. In some cases, disclosure to the ORR and/or DfT may not be appropriate (in particular, given Freedom of Information Act requirements).

Clause Reference	Notes
Scottish law contracts	<p>The standard form is drafted to comply with the laws of England and Wales. However, the vast majority of clauses/provisions will not require amendment to comply with Scottish law. If the contract is to be wholly performed in Scotland and/or if all Parties are Scottish, you may wish to consider the following amendments:</p> <ul style="list-style-type: none"> ▪ Clause 2.5: remove reference to "legal and beneficial" title which is an English law concept. ▪ Clause 9.3 (<i>Freedom of Information</i>): refer to "Freedom of Information (Scotland) Act 2002" and "Environmental Information (Scotland) Regulations 2004". ▪ Clause 11 (<i>Assignment</i>): rename clause "Assignment" and remove reference to "mortgage" which is an English law concept. ▪ Clause 15.10 (<i>Third Party Rights</i>): the Contracts (Rights of Third Parties) Act 1999 does not apply under Scots law. Third party rights may however be created under common law in Scotland so amend to include an express provision which declares that no rights will be conferred on third parties under the Agreement. ▪ Clause 15.11 (<i>Counterparts</i>): delete clause. Counterpart execution of documents is not currently permitted under Scots law. ▪ Clause 15.12 (<i>Disputes</i>): the Arbitration (Scotland) Act 2010 will apply to arbitration proceedings in Scotland unless the Parties specifically choose a different jurisdiction to cover the proceedings. ▪ Testing clause/execution: update to reflect Scottish signing requirements.