

# Statement of Principles

## Liabilities and Indemnities



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This document includes the Statement of Principles, a description of the issues (with examples) and contractual language.

### Key Words:

- Area of Operations
- Client
- Company Group
- Contract
- Contractor
- Contractor Group
- Geophysical Industry
- Partners
- Subcontractor
- Tender
- Third Party(ies)

Terms that are in bold type are defined in the Glossary of Terms which forms part of this family of Statements of Principles.

## Statement of Principles

**Contractor** accepts being responsible for reasonable, measured risks associated with its activities and in line with the potential risk/reward ratio and generally accepted industry standards. **Contractor's** liability for punitive, indirect, consequential, pollution, reservoir and other damages with catastrophic potential should be brought in line with the potential risk/reward ratio by liability exclusions or damage limits.

The following points should be covered in all **Contracts**:

1. For all liabilities/indemnities falling within normal areas of operation and not within Exclusion Zone areas (which are addressed in IAGC Statement of Principles – Indemnities – Exclusion Zone) the core principle of liability allocation should be based upon the “Knock-for-Knock” principle. Under this Mutual Hold Harmless regime, the **Contractor** is responsible for injury/damage to its people and property (including its other contractors/subcontractors people and property) and the **Client** is responsible for injury/damage to its people and property (including its other **Contractors/Subcontractors** people and property) and for injury/damage to its co-venturers people and property, without regard to the cause thereof.
2. Both the Geophysical Contractor and the Client should accept liability for damage claims made by third parties to the other party to the Contract, to the extent of their negligence or fault with a fixed limit to liability tied to the remuneration or reward received by **Contractor** under the **Contract**.
3. The **Client** should indemnify the Geophysical **Contractor** fully against loss or damage to the reservoir or formation, damage or injury resulting from pollution originating from any source other than **Contractor's** equipment, including costs of clean-up and disposal and this indemnity in respect of pollution should override the Geophysical **Contractor's** indemnities to the **Client** in respect to **Third Party** property and personnel.

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4. Neither party should be liable to the other for punitive incidental, consequential, or indirect damages,
5. Nor for any loss of profits or business interruption. These losses are inestimable and are likely to be out of all proportion to the amounts a **Contractor** can reasonably charge for its services and it is unlikely that **Contractor** could obtain insurance to cover these losses on any reasonable terms.
6. Any **Third Party** property which is in the possession or control of the **Client** should be covered by the **Client's** indemnity hold harmless provisions to the Geophysical **Contractors**.

## Commercial Context

Geophysical **Contractors**, as companies providing services in a maturing exploration and production industry, are increasingly required to work in more developed, dynamic and volatile environments where large liabilities can potentially occur. Many of the service **Contracts** provided by **Client** organizations include onerous liability provisions that are not contemplated by the current pricing levels and reward structures of the **Geophysical Industry**. In order for the Geophysical **Contractor** to provide services at rates acceptable to the **Client** and to remain a commercially viable industry, **Contractors** should have the protection of a legally enforceable **Contract** which controls exposure to risk and allocates the exposure to risk in a manner reflective of the relative risk reward received by both the **Contractor** and the **Client**. The IAGC membership supports the position that the **Contractor** should not be subject to **Exploration Risk** in order to provide timely and safe **Geophysical Services**. This is fair and reasonable as the **Contractor** is not reaping the rewards of the exploration activities, namely the upside of long term oil and gas production and sales occurring after the completion of the **Geophysical Services**.

Geophysical **Contractor** liability policy is based upon principles of mutual hold harmless, in respect of **Contractor Group** and **Client** group property and personnel, negligence in respect of **Third Party** property and personnel, limits on liabilities and protection against certain catastrophic risks. Recent terms and conditions attached to **Client Tenders** attempt to shift additional risk exposure, including **Exploration Risk**, onto the **Contractor** by: (a) seeking unlimited liability provision which bear no relation to the remuneration paid to the **Contractor** under the **Contract**; (b) shifting onto the **Contractor** loss exposure for potential catastrophic risks, which are often immeasurable and uninsurable risks; and (c) increasing the number of **Third Parties** for which indemnity from the **Contractor** is sought and reducing the scope of the **Client's** indemnity to the **Contractor** by refusing to include their "other **Contractors/Subcontractors**" and **Client** co-venturers/**Partners** within the **Client** indemnity obligations while requiring the **Contractor** to indemnify the **Client** for all damage to personnel and property of all **Contractor's** other **Contractors** and **Subcontractors** of any tier; and (d) nullifying the mutual hold harmless regime in the event of gross negligence or willful misconduct.

The way to limit **Third Party** liability is for each party to be liable for its other **Contractors/Subcontractors** and invitees so that the number of **Third Parties** is limited. In addition, the **Client's** hold harmless obligation should extend to its co-venture's property and personnel. In the case of **Contractors/Subcontractors**, each party selects and controls its "other **Contractors**", is in privity of **Contract** with those parties and, therefore, has control over establishing mutual releases and indemnities with these "other **Contractors**" and has direct contractual recourse against them in the event of loss. Most of the relevant property and personnel of "other **Contractors**" and **Third Parties** in the **Area of Operations** are under the ultimate control of the **Client** and the associated risks/value are more readily ascertainable by the **Client**. Many catastrophic risks are often uninsured or under insured and expose the Geophysical **Contractor** to liabilities which are out of proportion to their limited role as a service company. Since the **Client** stands to make substantial profits in the event of a successful well or reservoir as compared to the **Contractor's** return on services, the **Client** should assume commensurate risks.

# Contractual Language

## Definitions:

1. "Claim(s)" shall mean all claims, demands, liabilities, damages, judgments, fines, penalties, awards, losses, costs, expenses (including, without limitation, attorneys' fees and costs of litigation) of any kind or character.
2. "**Contractor Group**" shall mean: (i) **Contractor**, (ii) its Affiliates (suitably defined, including related companies), (iii) their joint venturers and their Affiliates, (iv) their **subcontractors** and their Affiliates, and (v) the officers, directors, employees, agents, representatives and invitees of all of the foregoing.
3. "**Company Group**" shall mean: (i) Company, (ii) its Affiliates (suitably defined, including related companies), (iii) its and their working interest owners, **partners**, joint operators, and co-venturers and their Affiliates, and (iv) their other **contractors** and **subcontractors**, and their Affiliates, and (v) the officers, directors, employees, agents, representatives and invitees of all of the foregoing.
4. "Offshore Installation" shall mean: (i) a fixed permanent oil and gas platform, (ii) a floating, production, storage and off take vessel, (iii) a semi-submersible or jack-up drilling unit, (iv) a pipe lay vessel, (v) a well intervention vessel or any other vessel or installation, (vi) or other object connected to the seafloor or otherwise not readily removable.
5. "**Third Parties**" shall mean any persons, parties or entities not included in the abovementioned definitions of **Contractor Group** and **Company Group**.
6. For the purposes of this article, any reference to property includes any property which is owned, hired, leased or otherwise provided by or in possession or control of the referenced Party.

## Liabilities & Indemnities

### Mutual Hold Harmless Principle:

**Indemnification by Contractor:** **Contractor** shall release, defend, indemnify and hold harmless **Company Group** from and against any Claims arising out of property damage or loss and/or personal or bodily injury, illness or death incurred by any member of **Contractor Group** during the term of this Agreement, regardless of the negligence in any form (including Gross Negligence and Willful Misconduct) or breach of duty (statutory or otherwise) of any member of **Company Group**.

**Indemnification by Company:** Company shall release, defend, indemnify and hold harmless **Contractor Group** from and against any Claims arising out of property damage or loss and/or personal or bodily injury, illness or death incurred by any member of **Company Group** during the term of this Agreement, regardless of the negligence in any form (including Gross Negligence and Willful Misconduct) or breach of duty (statutory or otherwise) of any member of **Contractor Group**.

### Third Parties based on Negligence:

**Contractor's Indemnification for Third Party Claims:** **Contractor** shall release, defend, indemnify and hold harmless **Company Group** from and against any Claims by **Third Parties** arising out of personal or bodily injury, illness or death, or property loss or damage, to the extent caused by the negligence of any member of **Contractor Group**, provided, however, that such indemnity shall be limited to the percentage degree of negligence of **Contractor Group** upon which the Claims are based.

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## Company's Indemnification for Third Party Claims:

Company shall release, indemnify, defend and hold harmless **Contractor Group** from and against any Claims by **Third Parties** arising out of personal or bodily injury, illness or death, or property loss or damage, to the extent caused by the negligence of any member of **Company Group**, provided, however, that such indemnity shall be limited to the percentage degree of negligence of **Company Group** upon which the Claims are based.

- Exclusion Zone

The Parties acknowledge that in the performance of the Services, **Contractor Group** would not normally be required to work within a 500 meter radius of any Offshore Installation. In the event that Company instructs **Contractor** to perform any Services within a 500 meter radius of any Offshore Installation (as defined), then notwithstanding any provisions to the contrary contained in this Agreement, Company shall be liable for and shall release, defend, indemnify and hold harmless **Contractor Group** from and against any and all Claims relating to and/or arising from such Services including any Claims relating to and/or arising from the loss of or damage to any property, bodily injury, death or illness.

- Pollution

## Company responsibility for Reservoir or Formation:

Company assumes all liability for and agrees to release, defend, indemnify and hold harmless **Contractor Group** from and against any and all Claims arising out of:

- (i) loss of or damage to the well, any geological formation, strata or oil or gas reservoir beneath the well head; and
- (ii) pollution emanating from the reservoir or from the property of **Company Group** or any from the property of **Third Parties**, irrespective of cause not otherwise the responsibility of **Contractor Group** under [*refer to pollution indemnity clause from Contractor*],

regardless of the negligence in any form (including Gross Negligence and Willful Misconduct) or breach of duty (statutory or otherwise) of any member of **Contractor Group**.

## Contractor's Responsibility for Pollution and Company's Responsibility for Pollution from any other source:

**Contractor** shall release, defend, indemnify and hold harmless **Company Group** from any and all Claims arising out of surface pollution (including control and removal thereof) emanating from **Contractor Group's** vessel(s) whilst under its custody and control during the term of this Agreement. Notwithstanding anything to the contrary, Company shall be liable for and shall release, defend, indemnify and hold harmless **Contractor Group** from and against any and all Claims related to or arising from pollution or contamination emanating from any other source, including control and removal thereof, during the term of this Agreement, regardless of the negligence in any form (including Gross Negligence and Willful Misconduct) or breach of duty (statutory or otherwise) of any member of **Contractor Group**.

- Consequential Damages/Losses And Punitive Damages

## Waiver of Consequential Damages and Losses and Punitive Damages:

Notwithstanding anything contained in this Agreement to the contrary, Company shall be liable for, and hereby releases, indemnifies, defends and holds harmless **Contractor Group** from **Company Group's** indirect, incidental, special, consequential losses or damages or punitive damages (whether or not

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foreseeable at the date of this Agreement), including without limitation, damages or losses for lost production, lost revenue, lost product, lost profits, lost business or business interruptions; arising out of, or related to, the performance of or subject matter of this Agreement, irrespective of the negligence in any form (including Gross Negligence or Willful Misconduct) or breach of duty (statutory or otherwise) of the indemnified Party.

Notwithstanding anything contained in this Agreement to the contrary, **Contractor** shall be liable for, and hereby releases, indemnifies, defends and holds harmless **Company Group** from **Contractor Group's** indirect, incidental, special, consequential losses or damages or punitive damages (whether or not foreseeable at the date of this Agreement), including without limitation, damages or losses for lost production, lost revenue, lost product, lost profits, lost business or business interruptions; arising out of, or related to, the performance of or subject matter of this Agreement, irrespective of the negligence in any form (including Gross Negligence or Willful Misconduct) or breach of duty (statutory or otherwise) of the indemnified Party.