

Statement of Principles

Indemnities – Exclusion Zones



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

Key Words:

- Client
- Contract
- Contractor
- Contractor Group
- IAGC
- Seismic Operations
- Subcontractor
- Standby Rate
- 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

1. When operating outside of the defined Exceptional Risk Zone, the **IAGC** Statement of Principle Regarding Indemnities should govern the allocation of liability between **Client** and Geophysical **Contractor**. That is, the E&P industry recognized principal of knock-for-knock liability should allocate the liability between the **Client** and **Contractor** and at-law principles should govern liability to **Third Parties**.
2. Where a **Client** specifies in the **Tender** process, in a variation to the **Contract** or by means of a work order during the course of the work that the **Contractor** should conduct operations within the Exceptional Risk Zone, then the **Client** and **Contractor** shall mutually define an Exclusion Zone surrounding the Offshore Installation, sub-sea equipment or on-shore and sub-surface equipment in land surveys taking into account: local, national and/or maritime legislation pertaining to any proposed restricted working distances and operations; the requirements of any third-party operator working within the proposed zone; the risk of damage to or loss of **Contractor**, **Client** and **Third Party** personnel and property; and the type of survey, survey lines, streamer configuration, prevailing currents, prevailing soil conditions and other such factors as may influence or determine the establishment of the Exclusion Zone. The responsibility for correctly defining the Exclusion Zone and/or mapping the location of surface and subsurface facilities within the Exclusion Zone and any costs associated therewith and/or any liability arising out of erroneous information regarding the location of surface and subsurface facilities within the Exclusion Zone, shall remain with the **Client** even if the mapped locations are provided at **Client's** request via a reimbursable **Subcontractor** to the **Contractor**.

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If **Client**, upon written instruction, directs **Contractor** to conduct survey operations within the Exclusion Zone, then the Client shall bear all risk of loss to **Client's**, **Contractor's** and **Third Party** personnel and owned or operated equipment without regard to the cause of such damages, including the negligence or fault of the indemnified party. Notwithstanding the **Client's** assumption of risk, the Master of the Vessel shall, consistent with Maritime Convention, remain the ultimate authority for determining the safe

operation of the vessel, and, without incurring any liability to **Client**, shall retain the right to refuse to conduct any near facility operations deemed unsafe or too hazardous to personnel or property at the time of operation.

Any delay in awaiting written instruction should be compensated at the agreed **Standby Rate**.

3. Once defined, if the **Contractor** strays into the Exclusion Zone, without being given specific instructions by the **Client**, then the **Contractor** shall assume all liability for loss to **Contractor's** and **Third Party** personnel and each of **Contractor** and Third-party's owned or operated equipment caused by the **Contractor's** operations within the Exclusion Zone up to a maximum **Third Party** liability equivalent to the **Contract** value.

Commercial Context

Geophysical **Contractors** are increasingly being required to conduct **Seismic Operations** near **Third Party** operator and/or oil company **Client** owned and/or operated oil and gas production installations and other near-obstruction areas with towed array streamer systems, seabed systems and/or land systems. As repeat 3D surveys or time lapse (4D) surveys become more widely used and accepted, the need for **Seismic Operations** near existing production facilities and within other near-obstruction areas is projected to increase. It is important therefore for IAGC to advise its membership, the regulatory community and the E&P community on this issue since the liabilities can be significantly greater than the expected value of the seismic **Contract**.

Seismic Operations in the proximity of producing facilities require that Geophysical **Contractors** bring extremely valuable seismic and maritime equipment within zones of heightened risk that have been recognized by various authorities in the form of operational standards and safety zones such as: (1) the advisory distances and procedures for land based geophysical operations recommended by the **International Association of Geophysical Contractors** pertaining to surface and sub-surface probes; and, (2) the Oil & Gas UK Guidelines that reference the statutory regulations of the Offshore Safety Division of the UK Health & Safety Executive (under section 22 of the Petroleum Act 1987) which prohibit vessels from entering a 500 meters zone around an installation without obtaining permission from the relevant authorities and the Offshore Installation Manager (OIM). Although under Maritime Convention the Master of the Vessel remains the ultimate authority for determining the safe operation of the vessel, all near facility operations allowed under permission from relevant authorities and the OIM are done only within the control and directions given by the OIM.

It is important to recognize that the 500 meters exclusion zone adopted by Oil & Gas UK was designed for supply vessel, rig **Tender** and general maritime activities, not **Seismic Operations** which carry an even greater risk to the **Contractors'** equipment. In recognition of the increased risks 1) in areas inside of 500 meters from offshore installations and other sub-sea obstructions and, 2) for operations within IAGC advisory procedures and distances for land operations (IAGC endorses the definition of an Exceptional Risk Zone per the UKOOA Guidelines) and states the principles below with regard to the allocation of liability during such operations. Further, IAGC endorses the concept that geophysical **Contractors** should not enter into Exclusion Zones except after careful consideration of the operational risks and after confirming that the pricing, terms, conditions, and liabilities reflect an appropriate allocation of risk versus reward.

Recent Examples:

In modern marine **Seismic Operations**, it would not be unusual for a vessel valued at USD 60-90 Million to be operating with a towed array of in-water seismic equipment valued at USD 30-45 Million. These operations would be carried out under **Contracts** with a range of values between USD 1 Million to USD 18 Million that carry an expected operating margin of 2-10% or a yield of USD 20,000 to USD 1.8 Million assuming the work proceeds well. As such it is imperative that an equitable allocation of risk and reward be kept in mind as liabilities and indemnifications for loss and damage to **Contractor's**, operator's and **Third Party** personnel and equipment are allocated in the **Contract** for operations within Exceptional Risk Zones. If during a close pass, winds or currents unexpectedly change, ability of **Contractor** to react and avert damage and loss is minimal.

Contractual Language

1. Offshore services only:

Contractors should not accept liability for its people and property when required to enter into the 500 meter zone to perform services. The indemnity from the customer should apply to all losses or damages, including Contractor's people and property.

The following clause is based on a full indemnity from the Company and does not specifically identify that if the Contractor strays into the Exclusion Zone, without being given specific instructions from the customer, the Contractor would assume liability. Such a provision would be a fall-back position.

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 or personal or bodily injury or death. "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.

With regards to the limit of liability, such a provision should be identified separately to provide for the Company indemnifying the Contractor for any liability assumed or suffered above the value of the Contract. We suggest the following:

Contractor Group's liability under this Agreement shall not exceed the aggregate amount of payments received by **Contractor** for **Contractor Group's** Services and Company shall release, defend, indemnify and hold harmless **Contractor Group** for any amounts in excess thereof, 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**.

2. Onshore services only:

Ultra-hazardous Activity: If **Contractor** is requested by Company to perform Services in an urbanized or environmentally sensitive area or under other ultra-hazardous conditions, then the Parties shall agree on an independent company to monitor the performance of such Services. Notwithstanding

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anything to the contrary herein, it is further agreed that, unless otherwise instructed by Company, **Contractor** shall be deemed to be in full compliance with its obligations and duties hereunder regarding detonation of explosives or discharges of shot points in the normal course of its operations when such detonations or discharges are of no greater quantity and at no lesser distance from the objects as provided for by the direction of an independent monitoring company mutually agreed upon by the Parties. To the extent **Contractor's** performance conforms with the foregoing monitoring company's directions, or Company's instructions, Company shall release, defend, indemnify and hold harmless **Contractor Group** from and against any and all claims that occur as a result of such shot points/vibrator stations during the term of this agreement. This indemnification shall apply whether or not **Contractor Group** is claimed to be or is adjudicated to be negligent by virtue of so locating such shot points/vibrator stations.