

To The Point

Master Service Agreements for the Oil and Gas Industry

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A Master Service Agreement (MSA) is a specific type of contract used by oil and gas companies when they engage with 3rd party contractors. The MSA is designed to specify the terms and conditions that will govern contractors' work duties and responsibilities. The MSA is typically used for on-site services performed by oilfield service contractors for a single service or ongoing services, such as equipment maintenance, well services, cementing services, etc. The MSA is a tool that may also be used to clarify which parties are responsible for administering worksite safety programs and managing premises liability claims filed by injured workers.⁴

With the help of your legal counsel, who should always be consulted in contract-related matters, an MSA can be used to simplify future contracts for long-term client/vendor relationships. It can also be used to protect your company's financial assets when contractors are performing work on company premises. An MSA is generally an ideal contract for field service operations, such as servicing wells.⁴

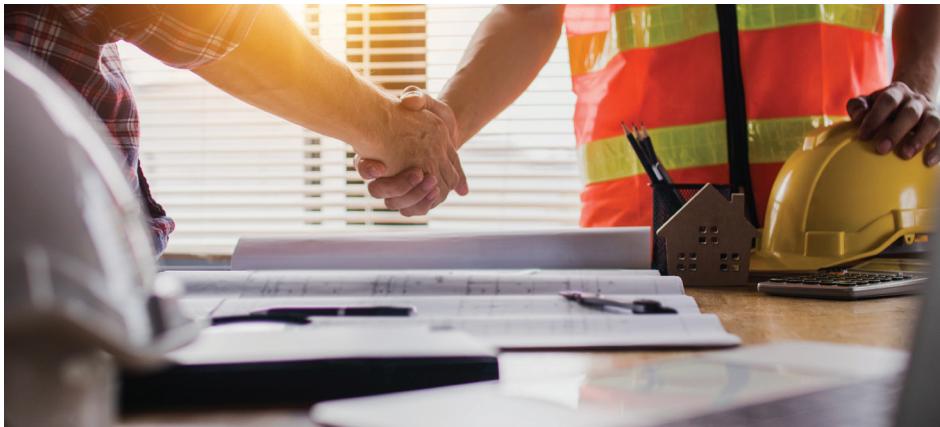
Your legal counsel can formulate the MSA to set the boundaries of the contractual relationship and establish a system for accomplishing work that needs to be done. The MSA can also provide an effective way to keep the work on track and resolve any disputes during work on a lease.

In the simplest terms, the MSA asks each party to be responsible for their employees and contractors without regard to negligence. Having each party take responsibility for their actions is important to lease operators and service companies working together.⁴

Common Elements of an MSA

Limitations of liability – Your legal counsel can draft language which allows you to limit your liability. The language can be customized to be specific to your industry and the parties involved. All consequential, punitive, and similar damages can be limited to ensure that your liability is limited to the cost of the contract or service provided by you.

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Severability Clause – Your attorney can include this provision which keeps the remaining portions of the MSA in force should a court declare one or more of its provisions unconstitutional, void, or unenforceable. Without it, your ability to rely on provisions in your contract that limit your liability may be jeopardized if a court finds another provision in your contract unenforceable.¹⁰

Indemnities – Your legal counsel can include this provision to protect your organization's assets. Counsel may recommend a joint agreement that relies on "mutual indemnification" between the contractual partners. Simply stated, indemnification language should allow each party to take responsibility for actions that occur on the lease operator's or energy site's location in their respective care, custody, and control. The indemnification language should also provide protection to the other party that did not cause or create the issue if the other party is sued or otherwise placed on legal notice.

Arbitration – Consider including arbitration provisions in your contracts to resolve customer disputes in lieu of litigation. Consult with your legal counsel regarding this clause.

Force majeure – This wording is important for all companies. Force majeure clauses may limit your liability for losses or breaches resulting from external forces such as earthquakes, tornados, storms, natural events, or other "acts of God." Specifically, list the things outside of your control rather than relying on a blanket clause stating, "anything outside your control."¹¹ Consult with your legal counsel regarding this clause.

Keeping MSAs Current

Maintaining insurance requirements (terms and limits) in your MSA is important in reflecting the current liability insurance requirements. Every MSA should require Certificates of Insurance (COI) documentation with limits at least as broad as the indemnity provisions stated in the agreement. The contractor signing an MSA should obtain and continue contractual liability insurance that provides coverage for all the release, defense, indemnity, and hold harmless obligations in the agreement.

To control the potential for expired or canceled insurance policies, the stakeholders to an MSA should receive prior notice of any party's change in insured status. Many insurers may not agree to give notice to additional insureds. The MSA agreement should require the contractor to provide notice of cancellation or change in Insurance policies.⁶ Be sure to consult with your legal counsel and insurance agent regarding maintaining insurance requirements for an MSA.

Contract Administration

You should consult with your attorney on who should manage the MSA contracts, maintain current records, and validate the insurance requirement of the MSA.

Not only should current Certificates of Insurance be in place for each contractor, but any changes in the party's legal name, mergers with other contractors, or subcontractor use by the contractor in the MSA should be addressed. Insurance renewal dates of each policy for each contractor should be in a diary to trigger a warning to the contractor to provide an updated COI.⁶

The compliance with the terms within the MSA should be monitored and discussed with the contractors. If the contractor is not complying with the agreement, timely objection letters should be sent to document communications and the contractor's response. Silence may equal consent.⁶

As contracts evolve, be sure that amendments preserve the intent of every provision. Ensure the proper parties are signing the amendments and that new wording reflects the intent of the contract.⁶ Be sure to consult with your legal counsel regarding contract administration.

Amendments to an MSA

Master Service Agreements, once agreed upon, often remain in force for years. As time passes and circumstances change, the parties may amend the agreement. Statutes and court cases may change your older MSA, and there should be a systematic review of MSA wording to ensure it is impactful and effective as legal rules shift.

Recent court decisions have shown the importance of updating MSAs and defining parties. Several changes were made to the MSA in one such case, which included one party having changes in their subsidiaries' names. The MSA held up in a breach of contract suit as "Company" in the definition section was still applicable and represented all other named subsidiaries.²

With mergers, acquisitions, change in ownership, and new service contractors common within the energy industry, it is imperative that operators have due diligence processes in place to ensure the transactions address each MSA affected. If your company's assets are taken over or the company merges with another, this will affect its legal identity. When this happens, any contracts (e.g., MSA) to which that company is a party will need to be altered so that any rights and obligations it has will transfer to the new company.⁹ Always consult with your legal counsel when amending an MSA.

Hold Harmless and Indemnity Restrictions in State Statutes Affecting MSAs

Oil and natural gas exploration and production is a multiparty effort. Oilfield operators use Master Service Agreements with their contractors. Under these agreements, the service contractors agree to provide services and materials for the operators. For those companies operating in multiple states, oilfield indemnity agreements must be tailored to satisfy each state's statutes that may affect the transfer of risk.

Depending upon the state or jurisdiction, an MSA might be challenged. Many states limit contractual indemnity agreements, particularly those that attempt to indemnify a party for its negligence. In Louisiana, New Mexico, Texas, and Wyoming, "Anti-Indemnity" acts are in place that are specific to oilfield contracts.⁷

When working in a state with Anti-Indemnification statutes, the state laws may prohibit your traditional MSA language and provisions. Using "form contracts" that limit your liability through minimum insurance language may not hold up, and your trust in such documents could be costly. The state of Louisiana's anti-indemnification law is the only anti-indemnity act that expressly disapproves of insurance agreements to circumvent the indemnity prohibition.^{7,3,5} Discuss these provisions and the various state laws with your legal counsel.

Conclusion

Master Service Agreements have been used for a long time in the Oil and Gas industry, and for a good reason. MSAs help delineate where each party's responsibilities begin and end in work activities and safety administration. Likewise, MSAs can help define critical important contractual concepts when accidents or other work-related issues arise. Be sure to always consult with legal counsel to understand the nuances and when implementing MSA best practices.

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