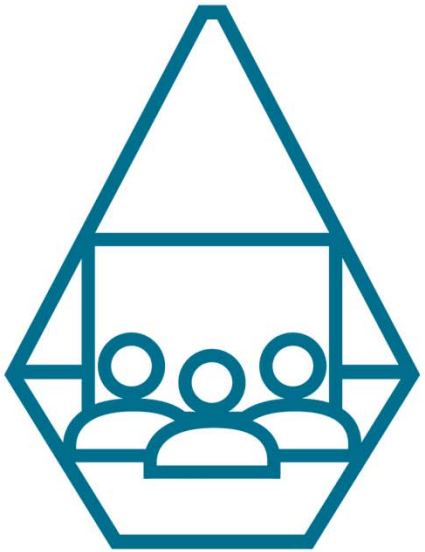

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Select Issues in Master Service Agreements

Anatomy, pitfalls, and fair negotiated positions

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OVERVIEW

What an MSA is

A standing contract between an operator (“Company”) and a service provider (“Contractor”) that sets the legal terms once, so each job can be ordered without renegotiating risk.

1 Terms set once

- No obligation to order or perform any particular job
- Governs only when work is actually ordered

2 Work ordered later

- Work orders, call-outs and POs carry rates, scope and schedule
- The MSA carries indemnity, insurance, liens and law

3 Decides who pays

- After an injury, accident, blowout, spill or unpaid invoice
- Long after anyone remembers signing it

OVERVIEW

Anatomy of a typical MSA: six sections

1

The parties and the work

Scope · performance · warranties · independent contractor · statutory employer

2

Financial

Invoicing and payment · audit · taxes · liens

3

Indemnity and insurance

Knock-for-knock · anti-indemnity statutes · additional insured · waiver of subrogation

4

Miscellaneous

Consequential damages · caps · force majeure · confidentiality · IP indemnity

5

Legal boilerplate

Entire agreement · modifications · joint preparation · severability · assignment · notice · choice of law

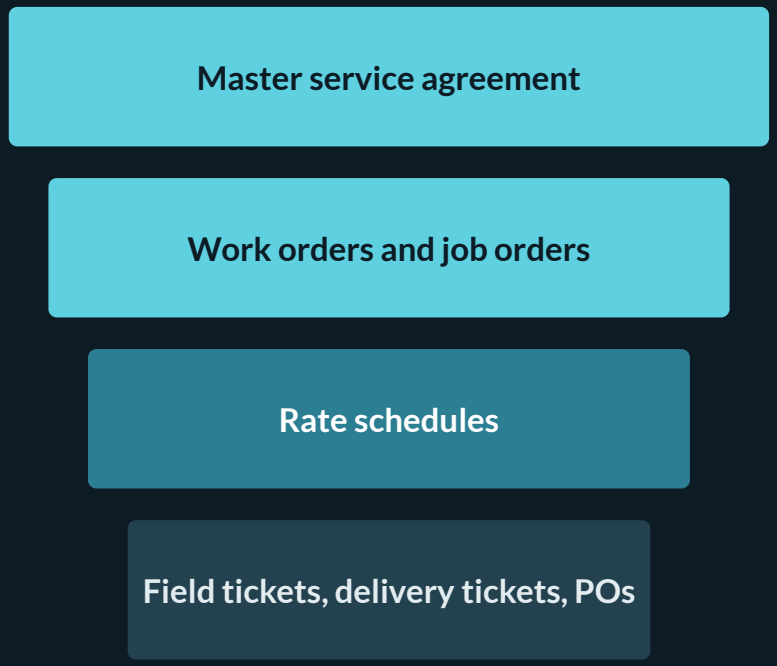
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Exhibits

Insurance · form work order · safety · compliance with federal laws

OVERVIEW

Which document controls?



Vendor tickets and invoices carry their own small print
Limits of liability, tool-loss charges, indemnities. The MSA must control over them; a signature on a ticket is a receipt only.

“The more specific document controls”
That precedence language lets the operator’s own work order override the MSA.

A later PO can control
Unless the MSA says it governs all work by Contractor for Company.

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OVERVIEW

Who the parties really are

Company Group

- Company and its affiliates
- Co-owners and joint interest owners
- Their officers, employees and insurers
- Company's other contractors and subs of every tier (negotiation point)

Contractor Group

- Contractor and its affiliates
- Subcontractors of every tier (if included in Company Group)
- Their officers, employees and insurers

Who signs is narrower than who is protected — or bound.

SECTION 1 · THE PARTIES AND THE WORK

Scope, performance and warranties

1 Scope

- Master terms apply to all work ordered
- No obligation to order
- Work orders incorporated

2 Manner of performance

- Good and workmanlike
- Specifications, laws and Company site rules

3 Warranties

- 12 months is market
- Repair, re-perform or refund
- Remedy should not limit the indemnities or liability for gross fault

Independent contractor, not a borrowed servant, but a statutory employee

Status	What it gives the operator	What it costs
Independent contractor	Generally not liable for the contractor's negligence	Lost if the operator controls how the work is done
Borrowed servant (disclaimed)	Immunity from the worker's own injury suit under workers' comp or the Longshore Act	Liable for his negligence toward others; for a seaman, becomes his Jones Act employer; disclaimer yields to conduct
Statutory employer (recited)	Immunity from the worker's own injury suit; no liability for his negligence toward others	Backup liability for comp benefits; does not reach Jones Act seamen

SECTION 1 · THE PARTIES AND THE WORK

Borrowed servant vs. statutory employer

WAIVE IT

Borrowed servant

What it is

Company directs and controls the contractor's crew, so the law treats the crew as Company's own employees.

Why waive it

Company would answer for the crew's negligence and lose the independent-contractor status the MSA's risk allocation depends on.

CLAIM IT

Statutory employer

What it is

Under La. R.S. 23:1061, the MSA recites that the work is "an integral part of and essential to the ability of Company to generate its goods, products and services."

Why claim it

Company is **immune from tort suits** by the contractor's injured employees, while the contractor keeps the duty to carry workers' compensation insurance.

! **Watch out:** day-to-day supervision of the crew can turn the borrowed-servant disclaimer into a borrowed-servant finding. Courts look at who actually controlled the work.

SECTION 2 · FINANCIAL

Invoicing, payment and audit

Payment

- Net 30 from a proper invoice with signed field tickets
- Pay undisputed amounts; withhold disputed ones on written notice

Invoice deadline

- Invoices not submitted within 90 days are barred
- Lets the operator close AFEs and joint-interest billings

Audit

- 3 years is a fair landing
- WI owners can go back 2yrs in a typical JOA

Taxes

- Contractor bears its payroll and income taxes
- Sales and use tax as a separate invoice line

SECTION 2 · FINANCIAL

Getting paid: the Louisiana Oil Well Lien Act

Who gets a lien

- Contractors and subcontractors
- Laborers
- Haulers and suppliers
- Equipment lessors
- No contract with the owner needed

What it covers

- The lease, wells and equipment
- Working interest owners' share of production and proceeds
- Applies off the coast of La on the OCS through OCSLA

180 days
to file a statement of privilege after the last work

1 year
to sue after filing

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SECTION 2 · FINANCIAL

What the MSA should say about liens

+ **Lien waivers**
Contractor defends and indemnifies Company for liens by Contractor's subcontractors

+ **Sworn statements**
That subcontractors and suppliers have been paid

+ **Direct payment and offset**
Operator may pay lien claimants directly and offset against amounts owed

+ **Contractor's own lien rights**
Reserved for undisputed amounts, after notice and a cure period

SECTION 3 · INDEMNITY AND INSURANCE

How the risk articles fit together

Indemnity
allocates the loss

→

Insurance
funds the indemnity

→

Additional insured and waiver of subrogation
keep the insurers from undoing the allocation

SECTION 3 · INDEMNITY AND INSURANCE

Knock-for-knock: the concept

Company Group

- Its own people
- Its own property
- Regardless of fault — and insures what it takes

Contractor Group

- Its own people
- Its own property
- Regardless of fault — and insures what it takes

Whether to include subcontractors in Group definitions or cross-indemnity with third-party beneficiary stipulation

SECTION 3 · INDEMNITY AND INSURANCE

The standard allocations

Risk	Who bears it
Personal injury	Each party for its own group
Property	Each party for its own group
Well, hole, reservoir, blowout, cratering	Operator — no vendor can insure them
Downhole tools	Operator, net of depreciation
Pollution	Surface: party with care, custody or control · Below surface and from the well: operator
Third parties	By fault
Consequential damages	Mutual waiver

- **Say it expressly.** To indemnify a party for its own negligence, the contract must say so; Texas also requires it to be conspicuous — hence the all-caps indemnities.
- **Gross fault.** A release or cap for gross negligence or intentional misconduct won't hold up in Louisiana.

What LOIA voids

Void

In a contract for work on oil and gas wells, a promise to defend or indemnify a party against **injury or death claims** caused by that party's own fault.

La. R.S. 9:2780

- **Not affected:** property-damage and pollution indemnity
- **Fault-free indemnitee:** indemnity holds — but it pays its own defense until then, and settling usually forfeits the right
- **Workarounds void too:** additional-insured and waiver-of-subrogation requirements
- **Scope:** MSAs and any agreement "pertaining to a well" — now "a well or wells" after Act 328 of 2026

The Marcel exception

Operator pays the full cost of its coverage as additional insured



Additional-insured coverage on the contractor's policy is enforceable

Act 328 of 2026 now dictates exactly how the operator must pay — next slide.

SECTION 3 · NEW THIS YEAR

Act 328 of 2026: Marcel codified as a procedure

Effective August 1, 2026 — additional-insured coverage is enforceable "solely" by these steps:

1. Separate written request for an additional-insured premium quote
2. Quote from the insurer or its authorized representative
3. Payment direct to the insurer — not reimbursement to the contractor
4. Group coverage only if the premium is expressly quoted for the group and the payment matches
5. Additional insured bears the named insured's deductible or retention up to $100,000

Texas Oilfield Anti-Indemnity Act

	Louisiana (LOIA)	Texas (ch. 127)
What it voids	Indemnity for the indemnitee's own fault — injury and death	Indemnity for the indemnitee's own negligence — injury, death and property damage
What is valid	Operator pays for its own additional-insured coverage (Act 328 procedure)	Insurance-backed indemnity: mutual up to the insurance each side carries; unilateral indemnity only up to $500,000

SECTION 3 · INDEMNITY AND INSURANCE

The three insurance endorsements that make indemnity work

1 **Additional insured**

The other group is covered under your policy

2 **Waiver of subrogation**

Your insurer cannot sue the other group to recover what it paid

3 **Primary and non-contributory**

Your policy pays first, without sharing with the other group's insurance

Pitfall: Failure to implement a process to ensure the Company/Contractor has current certificates of insurance before work begins on each new work order.

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SECTION 4 · MISCELLANEOUS

Consequential damages waiver

Mutual waiver of consequential damages

- Lost production, deferred reserves, rig time and standby, lost profits or economic opportunity
- Carve out the indemnities, so third-party claims stay covered
- Carve out insured losses and gross negligence or willful misconduct

SECTION 4 · MISCELLANEOUS

Force majeure, confidentiality and IP

Force majeure

- Excuses performance, never payment for work done
- Notice and mitigation requirements
- Termination right if it runs long

Confidentiality (NDA)

- Well data, logs, pricing and the MSA itself
- Carve-outs for co-owners, lenders and regulators, court-ordered disclosure
- Survives termination

IP infringement indemnity

- Contractor defends and indemnifies for claims that its tools, processes or software infringe a patent
- Carve-out for Company-furnished designs

SECTION 5 · LEGAL BOILERPLATE

Boilerplate that matters

Entire agreement

Precludes competing provisions in a PO, oral discussions, or other extrinsic evidence of the parties' agreement

Modifications

Only a signed writing by authorized officers that references the MSA; tickets and POs with fine print cannot amend it

Joint preparation

Neither party gets ambiguities construed against the drafter

Severability

If a statute voids part of the indemnity, the rest stands

Assignment

No assignment or subcontracting without consent

Notice and survival

Addresses and email for claims; indemnity, insurance, liens, audit and confidentiality survive termination

SECTION 5 · LEGAL BOILERPLATE

Choice of law: why it matters

Is it a maritime contract?

1. Does it support drilling or production on navigable waters?

2. Does the contract call for, or do both parties expect, a vessel to play a substantial role?

Maritime
LOIA and TOAIA do not apply; indemnity is favored and enforceable as written

Federal OCS
The adjacent state's law applies as federal law; the choice-of-law clause cannot change that

Not maritime, Louisiana land operations
State law — LOIA in Louisiana, public policy makes LOIA apply regardless of a different choice of law in the MSA

SECTION 6 · EXHIBITS

The exhibits

Insurance requirements

Workers' comp and employer's liability with alternate-employer endorsement; CGL; auto; excess; pollution for fluid haulers; professional for engineers and inspectors; hull and P&I for vessels – party's insurance agent should review required coverage to confirm compliance

Form work order

Well or location, scope, rates, start date — and whether a vessel will be used; incorporates the MSA; no added terms. MSA should explicitly apply regardless of the use of the form

Safety requirements

Site rules, stop-work authority, drug and alcohol testing, incident reporting, training, etc.

Compliance with laws

The federal laws and regulations the contractor must follow (for example OSHA or BSEE or USCG, environmental, DOT and EEO, immigration, etc.), flowed down to subcontractors

CLOSE

A ten-point MSA review checklist

1. Does the MSA control over field tickets, POs and invoices?
2. Who is in Company Group and Contractor Group, and does it include subs or have cross-indemnity and third-party beneficiary stipulation?
3. Does the statutory-employer recital reach everyone it should?
4. Lien waivers, offset rights and invoice deadlines — can the operator close the AFE?
5. Is the property knock-for-knock symmetrical and fault-free?
6. Who bears the well, reservoir, downhole tools and pollution?
7. Is the indemnity enforceable — LOIA, Texas, or maritime?
8. If additional-insured coverage is wanted, does the form follow Act 328?
9. What governing law and venue actually apply to this job?
10. Are the exhibits attached, current and matched to the work?

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CLOSE

Questions and contact

Thank you

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