

# A Master License Agreement for Seismic Data

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## Summary

For decades the licensing of seismic data was based mostly upon a handshake and an understanding of common industry practice. Over time common industry practice as it relates to the use of licensed seismic data has become quite diverse, even to the point where it could be said that there is no common industry practice. Various discussions among seismic industry participants led to the realization that the time has come for uniformity with respect to the seismic licensing activities of our industry. The CSEG executive formed a committee to create a Master Licensing Agreement for Seismic Data ( MLA ). Our intent is to create a standard master agreement, which will govern seismic licensing activities among licensors, licensees and the brokers who facilitate such transactions. A Canadian business perspective was used in the writing of this MLA, with the intended parties being Oil and Gas companies, Seismic Brokers and some of the service companies engaged in licensing their own proprietary seismic data. This Agreement is largely intended to codify current reasonable business practices so that the use of licensed seismic data by Canadian exploration and development companies may continue to be carried out in an efficient, business oriented manner. While generous in its lack of encumbrances, this Agreement clearly defines the obligations and duties of all parties. All brokers, licensors and licensees who wish to be governed by this Agreement will individually sign a counterpart of the Agreement and a record of such execution will be kept with the Canadian Society of Exploration Geophysicists ("CSEG") in Calgary. The CSEG will post a list of such participants on their website as a matter of public record. Individual licenses will thereafter be separately (and confidentially) executed through the use of confirmations administered by the broker, with each license being subject to the master agreement. As of the writing of this abstract the CSEG MLA is still a work in progress; however our committee hopes to have a ratified agreement prior to the CSEG convention of 2001.

## Introduction

A lack of clarity combined with an over reliance upon industry practice in most of the existing licensing documents has left a legal minefield within the Geophysical industry. Our most disturbing discovery made during the preparation of this MLA was that the existing manner of signing agreements between licensor and broker, and between licensee and broker did not bind the licensee and the licensor to each other. The only party, which is legally bound, is the broker; this does little to make the agreements enforceable.

Other significant legal and business issues that needed to be dealt with are: what can be done with seismic data after it is licensed, what are the brokers roles and responsibilities, is the agreement binding, if so is it enforceable? The simplicity offered by an MLA would greatly reduce the due diligence required during a merger or acquisition. By limiting the number of documents needed to be reviewed to determine if any business restrictions or costs would be occurred during the merger or acquisition the potential for unpleasant surprise should be reduced. There are many other less common or less significant issues that can still cause grief, that are also not covered off in most existing licensing agreements.

The status quo is no longer acceptable and if the Canadian Oil and Gas industry does not create a solution for this situation we will have one made for us; perhaps an adoption of American business model, or one that is creating in the judicial system.

## Brief Synopsis of the MLA in its Current Form

### Recitals:

The "Whereas" clauses set forth the intention of adopting a Master Seismic Data License Agreement. This structure requires all parties (licensee, licensor, broker) to sign the same agreement with the CSEG. This will bind all parties who have signed to each other in any licensing transaction they have entered into. The CSEG will also act as administrator to this MLA. A similar model is in use for an Industry agreement dealing with assignments and novations. An Industry Agreement is also currently in use with respect to dealing with changes brought about by the Limitations Act (Alberta).

### Article 1,

Definitions: This section specifically defines those terms, which are used throughout the Agreement and in any Confirmation. Certain of these definitions may differ somewhat from common parlance, as they were crafted to serve the purposes of both this Agreement and the industry as a whole. Key definitions include: Data, Direct Control, Essential Data, Genetic License Option, Genetic Privilege, Interpretation and Related Entity. A set of "Confirmations" contains a description of the Data being licensed, the fees payable in respect of the License and other specific transaction information.

**Article 2, Grant:**

A license is granted by the Licensor (while reserving its ownership and intellectual property rights to the Data) to the Licensee by each of them executing a separate Confirmation. After the Licensee receives the Essential Data or its Confirmation (whichever is earlier), the Licensee has 15 Business Days to advise of any errors or omissions in the Data or the Confirmation, otherwise the Confirmation and the Data are deemed accepted by the Licensee. This right is in addition to the ability of the Licensee to conduct an initial quality inspection.

**Article 3, Purpose and Procedures:**

The Licensor and Licensee will each deliver to the CSEG an executed counterpart signature page of the Agreement. The CSEG's office in Calgary will be the depository for executed counterparts of the Agreement and will perform the administrative function of maintaining a current list of parties to the Agreement. Confirmations will be issued via the Broker with respect to each License granted pursuant to the Agreement.

**Article 4, Quality Inspections:**

Prior to accepting the License, the Licensee has the right to conduct an inspection of the Data, subject to restrictions as to the use of the Data during the course of the inspection.

**Article 5, Rights and Obligations of Licensee:**

The Licensee has specific rights to which it is entitled and obligations, which it must meet in the course of its use of the licensed Data. The rights include the ability of the Licensee to disclose the Data to a Related Entity, while the obligations include the duty to refrain from using the Data other than for the specific purposes set forth. This is a key element of the Agreement, and an area that provoked much discussion amongst members of the Committee. A fundamental question arose as to whether the rights of the Licensee in the Agreement were too broad. The Committee attempted to give the Licensee broad authority in using the Data to advance business partnerships, but still had to balance this against providing adequate protection for the Licensor against losing all value for their proprietary Data. The definitions of Interpretation and Data have been drafted (in part) in order to achieve this balance. The Committee was also mindful of current business practices. The relationship that exists between parent companies and wholly owned subsidiaries, and the effect of that relationship on the use of licensed Data, is also specifically dealt with.

**Article 6, Audit:**

Where there is a suspected breach of any term of the Agreement or a License, either of the Licensor or the Licensee are entitled to request an independent investigation to determine if such a breach has, in fact, occurred. The Committee viewed the right to conduct an audit as an important tool for Licensors to protect themselves from possible breaches by Licensees.

**Article 7, Billings and Payment:**

This provision sets out the payment terms for the License as well as the Broker's entitlement to a commission.

**Article 8, Taxation:**

This provision describes the parties' obligations with respect to the payment of taxes (including GST).

**Article 9, Representations and Warranties:**

The Licensor and Licensee make specific representations and warranties in respect of each party's authority to enter into the Agreement. No representation or warranty is made as to the quality of the Data. The Licensee may terminate the License within 60 days if there is a significant difference in location or substance of the Data from what was originally requested by the Licensee.

**Article 10, Liability and Expenditures:**

Neither the Licensor, the Broker or their respective affiliates will be liable for any damages as a result of granting the License or the use of the Data (in the absence of gross negligence or willful misconduct). Any expenses incurred in respect of the Data by the Licensee are the Licensee's responsibility.

**Article 11, Transfer and Assignment:**

The Licensee (and any Related Entity) is generally prohibited from assigning or transferring the License, the Data or the Agreement without the prior written consent of the Licensor. However, the License may be transferred, in the event of a corporate reorganization, to the entity that acquires all of the Licensee's assets and/or securities. Permitting the License to be transferred without the payment of an additional fee only in circumstances where a third party acquires **all** of the Licensee's assets and/or securities is an attempt to provide the Licensor with some degree of protection while not unduly limiting the Licensee's ability to restructure itself.

**Article 12, Notices:**

All notices under the Agreement must be in writing and either hand delivered, delivered by registered mail or faxed.

**Article 13, Confidentiality:**

The Licensee must treat the Data as confidential and take the appropriate measures to ensure that any third party who is provided access to the Data similarly covenants to treat the Data as confidential. In addition, the Broker is bound by similar confidentiality obligations and, further, cannot disclose the identity of the Licensee without its consent except in certain circumstances.

**Article 14, Term and Termination:**

The Agreement is for ten years. This takes into consideration the need for the MLA to be reviewed and updated. Any party may withdraw from the Agreement on an annual basis by providing written notice to the Administrator (CSEG). Any License may be terminated if a Licensee is in default of any term of the Agreement with respect to a License, and such default is not remedied within thirty days after written notice has been provided to the Licensee. Also, if the Licensee is in default of a term of the License (and has received notice of such default from the Licensor) and a Negative Financial Event occurs, the License may be terminated immediately by the Licensor.

**Article 15, Obligation of the Licensee upon Termination:**

Once a License is terminated, the Licensee and its affiliated parties must immediately refrain from using the Data, return and/or destroy the Data and any related materials, and swear a statutory declaration confirming such actions have occurred.

**Article 16, Arbitration:**

In the event of a dispute (other than in relation to a decision to conduct an Audit), the matter is to be put before a three-person arbitration panel for resolution in accordance with the *Arbitration Act* (Alberta) upon the request of any party to the dispute. The compulsory use of arbitration is always the subject of some debate. The Committee chose a method that clearly defines the course that must be followed by the parties in the case of a dispute. The Committee also sought to create a method of settling the dispute, which would be timely and proportionate. Thus, a short time period for having the dispute heard and a limit on damages has been included.

**Article 17, Administrator's Duties:**

The CSEG will act as the Administrator with its primary function being to maintain a current list of parties to the Agreement. This list will allow all interested parties to determine who is using the MLA and whether or not an agreement other than the MLA will be used for licensing data from that source.

**Article 18, Liabilities and Indemnity of Administrator:**

Each party to the Agreement agrees to indemnify the Administrator (in the absence of gross negligence or willful misconduct) for any losses it incurs in the course of administering the Agreement.

**Article 19, Appointment and Replacement of Administrator:**

This section deals with the manner in which the Administrator is appointed and replaced.

**Article 20, Broker Appointed as Agent:**

Historically, the Broker has acted in a loose agency capacity for parties to a license. Arguably, the Broker has acted primarily, if not exclusively, as the agent for the Licensee. This agency relationship has assisted in maintaining the identity of the Licensee in confidence. The Committee has formalized the Broker's appointment as agent for the Licensee, but only for the restricted purposes of negotiating the License and executing the Confirmation for and on behalf of the Licensee. In the event of any conflicts arising, the interests of the Licensee shall prevail.

**Article 21, Miscellaneous**

Schedule "A" is the Licensee's Confirmation.

Schedule "B" is the Licensor's Confirmation.

Schedule "C" is the addresses and contact persons for the signing parties.

The agreement states that if there is a difference between the MLA and the confirmation, the confirmation will prevail. This allows for a limited amount of adjustments to the MLA.

**Conclusions.**

The need for a standard Industry Master Licensing Agreement for Seismic Data exists. The agreement which is being worked on by the CSEG and its committee will provide the clarity, efficiency, and enforceability which at present is missing in most licensing activities in Canada.