

AIPN Model Contracts

The Model Contracts produced by our volunteer drafting committees are considered to be one of the flagship services the AIPN provides to its members and the industry as a whole. The drafting committees consist of representatives of many companies and firms around the world, including leading practitioners in the subject matter of the Model Contract as well as people interested in learning about the Model by being involved in its development. A committee works for as many as two to three years producing a number of drafts of a new Model Contract before it is satisfied that it reflects the best practices in the industry. A Committee revising an existing Model typically takes less time. The aim is to produce a Model Contract that is clear, concise, fair, and balanced and that will be widely accepted in the industry. Without wide acceptance, a Model Contract can not achieve its purpose of being a “standard”. In addition to producing the Model Contract, the drafting committee also prepares Guidance Notes and Education Modules. The Guidance Notes provide the reader with insight into the deliberations of the committee and the rationale for major provisions. The Education Modules outline the primary provisions of the Model, which can be used by AIPN Regional Chapters to educate members about the contract. The AIPN has prepared Term Sheets for some Model Contracts, and this effort may be expanded in the future.

The first AIPN efforts to produce Model Contracts began in the late 1980’s, when some members began discussing how a model form operating agreement might significantly decrease the cycle time in negotiating, drafting, and finalizing an actual agreement. At the time, many major companies had their own forms and the process could take well over a year to complete, by which time operations could be underway. While there was initial resistance by some companies to a model form operating agreement, once the first AIPN model JOA was published in 1990, even those who were originally opposed agreed that cycle time was significantly reduced by using the Model Contract and they began using the form. Since that time, numerous Model Contracts have been published by the AIPN, and many of them have been revised to keep the model current and also reflect the experiences of parties with the existing agreement.

Published Model Contracts include the following:

- Accounting Procedure (1992, 2000, 2004)
- Confidentiality Agreement (1990, 1999, 2007)
- Consultant Agreement for Business Development (1999, 2008)
- Crude Oil Lifting Agreement (2001)
- Farm Out Agreement (2004)
- Gas Sales Agreement (2006)
- International Dispute Resolution Agreement (2004)

- Joint Operating Agreement (JOA) (1990, 1995, 2002)
- Secondment Agreement (2002)
- Study & Bid Group Agreement (1992, 2006)
- Unitization and Unit Operating Agreement (2006)
- Model Contracts Handbook (2006)
- Service Contracts
 - Master Service Arrangements (MSA) (2002)
 - Seismic Acquisition Contract (2002)
 - Well Services Contract (2002)

At any given time, there are four or more drafting committees working to develop a new or revised Model Contract. The remainder of this letter addresses what is currently going on with our Model Contract program, which is headed by our Vice President of Model Contracts, Owen Anderson.

Recent Developments

At the AIPN Board meeting of September 14, 2008, a new Model Contract and a User's Guide for another Model Contract were approved, while the establishment of two new drafting committees was approved.

Consultant Agreement for Business Development in a Host Country (Co-Chairs: Steve Molina, Chris Strong, and Ron Sponberg)

This Model Contract, first published in 1999, has not been widely used because of its narrow focus on U.S. FCPA requirements. Several multilateral treaties are now in place and more than 60 countries have foreign anti-corruption laws similar to those of the U.S. The Model Contract has been revised to properly reflect the diversity of international law in this area. The drafting effort took about 2 ½ years, which is longer than expected, due to the necessity to balance the form's consideration of the FCPA and other related laws and conventions around the world. The Consultant Agreement and Guidance Notes for it are now available at <http://www.aipn.org/members/modelagreements/details.asp?id=116>. Included as supplements to the Guidance Notes are information about TRACE, an international non-profit membership organization working to reduce corruption in transactions involving business intermediaries, and an excellent article by Tim Martin entitled "Using Consultants in Foreign Lands".

User's Guide for Adapting the 2002 JOA and 2004 Accounting Procedure for use offshore Australia (Co-Chairs: Greg Heath and Andrew Thompson)

Many people indicated that they wished to use the AIPN JOA for Australian offshore operations, but found it difficult to do so because the licensing regime and certain Australian laws do not lend themselves well to the Model Contract. The Australia

Offshore Licensing Regime is a concession/tax/royalty regime and not a production sharing or service contract regime. In addition, the Australian legal framework is different in a number of key areas from that used in the JOA. To encourage use of the AIPN form of JOA and Accounting Procedure, it was decided in the spring of 2007 that it would be appropriate for Australian practitioners to prepare a User's Guide for adapting them for use in Australia. The User's Guide is now available at <http://www.aipn.org/members/modelagreements/details.asp?id=136>.

On September 14th, the Board also approved the establishment of these two new drafting committees and the co-chairs listed:

Area of Mutual Interest Agreement (Co-Chairs: Frank Alexander and Michael Josephson)

The objective of the drafting committee will be to develop a Model AMI Agreement utilizing alternatives and options as necessary to reflect different approaches to AMIs in common use in the international petroleum industry. It is possible that two Models will be developed, one for an "up-front" AMI and one for an "after-the-fact" AMI. If you are interested in participating on this drafting committee, you may register on-line at <http://www.aipn.org/members/modelagreements/addmember.asp?id=147>. Once you have registered, you will get further information about the first meeting as well as notices of other drafting committee activities via e-mail. You will also have access to all drafts and information posted by the committee on-line.

Data Exchange Agreement (Co-Chair: Carol McDiarmid; second Co-Chair still to be named)

Energy companies often find themselves in the position of needing to exchange data with each other in various situations, such as participating in joint studies, joint operations, and unitization. This Model Contract will provide standard provisions for transactions of this type. If you are interested in joining this committee which is now forming, please register at <http://www.aipn.org/members/modelagreements/addmember.asp?id=149>. As with the AMI Agreement, you will have access to all information and drafts and receive notices of meetings.

Model Contracts Nearing Completion

Gas Transportation Agreement (Co-Chairs: Ariel Kaufman and Andreas Gunst)

The development of a Gas Transportation Agreement was a natural extension of the AIPN model Gas Sales Agreement. The Model can be easily adapted to a one-to-one contractual relationship or a multi-shipper situation. The market targets are unregulated transportation projects, gas transportation before reaching the regulated grid, new countries entering the gas transportation business, and gas to be transported to an

industrial or LNG plant. There will be two Model Contracts – one in which the pipeline has not yet been constructed (for example, to support project financing) and a second, simpler contract, where the pipeline is already constructed. It is expected that these two Models will be approved in January 2009.

LNG Sales and Purchase Agreement (Co-Chairs: Steve Miles and Harry Sullivan)

This Model Contract will meet an immediate demand for some of the largest global oil and gas projects now going on-stream. The drafting committee has been working for almost three years on this Model Contract and has produced six drafts to date. The committee has held both legal and technical meetings. The contract will be for spot or short term sales and purchase of LNG in the international marketplace. It is intended to be a balanced form between sellers and buyers and is a form of general applicability, not tailored to a particular jurisdiction. The Model Contract should be finalized and approved in the first quarter of 2009.

Model Contracts in Development

Services Agreements and Drilling Contract (Chair: Bill Pugh)

Well Services and Seismic Agreements subcommittee (Co-Chair: Charles White)

Drilling Contract subcommittee (Co-Chair: Don Simpson)

The Well Services-Seismic Agreement subcommittee is preparing revisions to the existing suite of Services Agreements (Well Services Contract, Seismic Acquisition Contract, and Master Services Agreement), which were finalized in 2002. The drilling contract will be a new Model Contract, which will be the first agreement of its type to be balanced between the drilling company and E&P company. The two subcommittees will coordinate with each other so all of the contracts interface with each other. This project was approved in April 2007 but there is still much work to be done. Therefore, AIPN members are invited to join the Committee at <http://www.aipn.org/members/modelagreements/addmember.asp?id=135>.

Operating Agreement (Co-Chairs: Jim Barnes and Garry Howe)

The AIPN first published its form of JOA in 1990 and revised it in 1995 and 2002. The new drafting committee is charged with bringing the 2002 Model up-to-date as well as making it simpler and more concise, to the extent possible. The committee held its first meeting in March 2008, following which a JOA Survey was sent to all AIPN members. The committee Co-Chairs have evaluated the results of the Survey and have taken the input received thus far to develop a list of issues and related articles that will guide the committee in its initial efforts. The next committee meeting is tentatively scheduled to take place in Houston at the AIPN offices on Thursday, October 28. Members are invited to join the drafting committee at <http://www.aipn.org/members/modelagreements/addmember.asp?id=143>.

You may provide your comments about the 1990 JOA or any of the other Model Contracts and your actual experiences with them in the Recommended Improvements section of our Model Contracts portion of the website at http://www.aipn.org/members/modelagreements/modelcont_imp.asp. All comments will be considered in revising the Models.

Proposed New Drafting Committee

AIPN Model Contracts contain various provisions and definitions that differ from contract to contract, but do not differ in intent. The AIPN Board is considering the establishment of a drafting committee to provide standardization of general clauses and definitions in AIPN Model Contracts. Not only will these standard clauses and definitions supply much-needed consistency among our Model Contracts, it should make the work of future drafting committees easier, since they will have a template of clauses and definitions with which to work.

Model Contract Handbook

Owen Anderson is the primary drafter of the Handbook, which consists of a Style Guide and template (layout and format) and discussion of common law, civil law and Sharia law. It is not only an excellent tool for drafting committees but is also a great tool for anyone drafting international oil and gas agreements. The Handbook can be downloaded at <http://www.aipn.org/members/modelagreements/details.asp?id=104>.

Model Contract Workshop

The annual AIPN Model Contracts Workshop, first held in 1990, has become an integral part of the development of each Model Contract. Committee Co-chairs present the latest draft of a Model Contract at each Workshop while the Model is in development. The drafting committees gain significant insight and suggestions from attendees who are not participating on the drafting committee. As a result, the committees get a different perspective on the issues and can use the feedback in preparing the next draft.

The Workshops, which are always sold out, have been held in Vail, Colorado; Banff, Alberta; Tuscany; and Bergen, Norway. The 2009 Model Contract Workshop will be held in Rio de Janeiro from June 21-24. Garry Howe and Marilda Rosado de Sa Ribeiro will Co-Chair this event. Plan to join us there.

You can maximize the benefit of your AIPN membership by joining an AIPN Model Contract drafting committee. Whether you are a seasoned expert or a student member or anything in between, you will learn from your experience and benefit the international energy as a whole by helping develop a Model Contract that allows us to work more efficiently and effectively.