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PROEM

The establishment of the Nigerian Content Development and Monitoring Board (NCDMB) in 2010 by the Nigerian Oil and Gas Industry Content Development Act, 2010 (the 'Act') was an initiative designed to drive local content development in Nigeria by the imposition of standards on capacity building, technology transfer and training in the Oil and gas industry.

The overall objective of the following ministerial regulations is to provide pragmatic strategies for the implementation and enforcement of the respective enabling sections of the Act.

Nigerian Oil and Gas Industry Technology Transfer Regulation 2021

This Regulation sets the targets on the number and type of joint venture or alliance to be achieved on each project in the Nigerian oil and gas industry.

THE NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT
ACT (2010 No. 2)

NIGERIAN OIL AND GAS INDUSTRY TECHNOLOGY TRANSFER
REGULATIONS, 2021

PURSUANT TO SECTIONS 3, 43, 44, 45, 46 AND 101 OF THE NIGERIAN OIL AND
GAS INDUSTRY CONTENT DEVELOPMENT ACT



ARRANGEMENT OF REGULATIONS

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S. I. No. 33 of 2021

THE NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT (2010 No. 2)

NIGERIAN OIL AND GAS INDUSTRY TECHNOLOGY TRANSFER REGULATIONS, 2021

[26th Day of February, 2021]

Commence-
ment.

In exercise of the powers conferred upon me by section 46 of the Nigerian Oil and Gas Industry Content Development Act and all other powers enabling me in that behalf, I, Dr. Emmanuel Ibe Kachikwu Minister of State for Petroleum Resources hereby make the following Regulations—

PART I—OBJECTIVE AND APPLICATION

1. The objective of these Regulations is to promote the development of technology in the Nigerian oil and gas industry through the transfer to Nigeria of technology and to establish guidelines, standards and methods for such Technology Transfer.

Objective.

2. The provisions of these Regulations shall apply to all operations that are carried out by operating companies in the Nigerian oil and gas industry as prescribed under these Regulations.

Application.

PART II—TECHNOLOGY TRANSFER

3. Where an operating company—

- (a) requires the utilization of technology to facilitate its operations, and
- (b) has determined to the satisfaction of the Board that a Nigerian Indigenous Service Company is not qualified under section 3 of the Act to be engaged to provide such technology or to provide any of the services requiring the utilization of such technology, the operating company shall be required to include a Technology Transfer Program in the Nigerian Content documentation it is required to submit under section 7 of the Act and in accordance with section 43 of the Act.

Requirement
for
technology
transfer
program
before
commence-
ment of
operations.

4. The Technology Transfer Program shall contain the following information—

(a) a plan for the promotion of Technology Transfer in the Nigerian oil and gas industry ;

Content of
technology
transfer
program.

(b) details on the extent, nature, type, and source of technology that the operating company seeks to apply to its operations and the extent to which the utilization of such technology shall assist in achieving its operations.

5. An operating company shall apply for and obtain the written approval of the Board in respect of its Technology Transfer Program before commencing operations and the Board shall grant such approval only where it is satisfied that

Board
approval for
technology
transfer
program.

a quantum of the technology that the operating company seeks to utilize for its operations will be transferred to Nigeria as provided under these regulations and in accordance with the Board's prescriptions in the Technology Transfer Guidelines issued by it from time to time.

Hardware
technology
transfer.

6. In respect of hardware technology such as machinery, equipment, products and other forms of hardware technology, an operating company shall ensure Technology Transfer in the following manner—

(a) Where an international oil service company has been qualified for the award of a contract by the operating company that includes the application of hardware technology based services to the operations of such an operating company, the operating company shall not proceed with the award or performance of such a contract unless it ensures the transfer of the same right as possessed by the international oil service company of a part of this technology to one or more Nigerian Indigenous Service Companies approved by the Board, as prescribed under the Technology Transfer Guidelines ;

(b) The Technology Transfer shall be carried out in a way that allows the recipient Nigerian Indigenous Service Company to directly apply the technology in respect of the operations of the operating company or in the Nigerian oil and gas industry in exactly the same way as if it was the international oil service company applying it ;

(c) The Board shall approve the award of such contract upon evidence of satisfaction of the requirements of this section by the operating company ;

(d) Evidence of satisfaction of the requirements of this Regulation 6 by the operating company shall include the following—

(i) certificate of importation of the hardware technology,

(ii) any legal instrument indicating the transfer of rights allowing the recipient Nigerian Indigenous Service Company to apply the technology as provided for in section 6(b),

(iii) an undertaking on maintenance support or instruction on the maintenance and use of the hardware technology for the recipient Nigerian Indigenous Service Company ;

(e) Within 3 months of completion of an oil and gas operation or its termination, an operating company shall transfer title and hand over possession to one or more Nigerian Indigenous Service Companies approved by the Board, of all hardware technology that it has directly purchased or acquired for the operations.

(f) Hardware technology transferred at the completion or termination of an oil and gas operation shall be in good serviceable condition and at no cost to the recipient Nigerian Indigenous Service Companies.

Information
based
technology
transfer.

7. In respect of information-based technology such as data, design, statistics, manuals, blueprint, software, processes, models, methods and

techniques, an operating company shall ensure its technology transfer in the following manner—

(a) Where an international oil service company has qualified for the award of a contract by the operating company that includes the application of information based technology services to the operations of the operating company, the operating company shall not proceed with the award or performance of the contract unless it ensures the transfer to one or more Nigerian Indigenous Service Companies approved by the Board, of a part of this technology as prescribed under the Technology Transfer Guidelines ;

(b) The Technology Transfer shall be carried out in a way that permits the Nigerian Indigenous Service Company or companies approved by the Board to lawfully utilize that technology in respect of the operations of the operating company or in the Nigerian oil and gas industry in exactly the same way as if it was the international oil service company using it ;

(c) The Board shall approve the award of such contract upon evidence of satisfaction of the requirements of this section by the operating company ;

(d) The following contractual arrangements shall serve as the means of information- based Technology Transfer between Nigerian Indigenous Service Companies and owners, license holders, franchisees, suppliers and developers of such technology—

(i) Sale or assignment of the intellectual property rights of such technology to Nigerian Indigenous Service Companies,

(ii) The grant of permission, license or franchise to Nigerian Indigenous Service Companies to utilize the intellectual property rights of such technology, subject to appropriate confidentiality agreements ;

(e) contractual arrangements for information based technology transfer shall contain the following terms—

(i) Rights transferred are irrevocable by the transferor company,

(ii) contractual arrangement shall subsist for the period that the technology is required for application in the operations,

(iii) non-renounceable rights by recipient company,

(iv) the transferor company provides product liability, indemnity and warranty,

(v) the transferor company shall provide access and adaption in event of new technology at fair value,

(vi) the transferor company shall provide technical support and training throughout subsistence of the contractual arrangement,

(vii) such other terms as the Board may consider necessary for the effectual technology transfer ;

(f) Where a contractual arrangement is terminated or for any reason ceases to be of effect, the operating company shall notify the Board within a period of 2 (two) weeks of its occurrence and shall ensure a replacement with another agreement within a period of 3 months of such notification.

Intangible
technology
transfer.

8. In respect of intangible technology such as technical skills and knowledge to be applied in the operations of an operating company either by such an operating company or by an international oil service company in respect of a proposed contract with an international oil service company, the operating company shall not proceed with the award of the contract or its performance unless it ensures the transfer of a part of this intangible technology to a Nigerian citizen or citizens in the following manner—

(a) Through Technical Strategic Alliances, the operating company shall facilitate the education and training of Nigerian citizens under a scheme with Nigerian Science and Technology Parks, Nigerian universities or such other schemes approved by the Board in collaboration with the National Information Technology Development Agency ;

(b) The education and training to be facilitated need not take place in Nigeria ;

(c) An operating company shall seek the approval of the Board for any scheme in pursuance of this section by application in writing which shall include the following—

(i) a list of the proposed recipients of the education and training under the scheme,

(ii) the location of the education and training,

(iii) the content of the education and training,

(iv) the facilitators of the education and training, and

(v) and the type of effect that such education and training will have on technology development in the Nigerian oil and gas industry.

9. The education and training schemes shall be facilitated in a way that allows beneficiary Nigerian citizens to rapidly develop capabilities from these intangible technology for them to be able to provide majority of the technical skills and expertise applied in the Nigerian oil and gas industry—

(a) As a condition precedent for their selection Nigerian citizens – that are to be beneficiaries of intangible technology shall agree to be fully engaged in the Nigerian oil and gas industry, whether in Nigeria or in respect of Nigerian operations outside Nigeria for a continuous period of a minimum of 3 (three) years following their education and training under the scheme ;

(b) The operating company shall subsidize and be responsible for the cost of the education and training in a scheme carried out pursuant to this section up to a maximum of 40% of the total cost of the training whilst the remainder of that cost shall be sourced by the Board from the Petroleum Technology Development Fund ;

(c) The transfer of intangible technology in this section through education and training shall satisfy the obligation for training in section 30 of the Act where such education and training is in respect of intangible technology and carried out in accordance with the above scheme as approved by the Board ; and

Education
and training
schemes.

(d) An operating company shall give priority in its Technology Transfer Program and its annual Technology Transfer Plans to the transfer of intangible technology.

10. The substantive law governing the validity, performance and interpretation of all Technology Transfer agreements executed pursuant to these regulations shall be Nigerian Law.

Substantive law governing technology transfer agreements.

PART III—PROOF OF COMPLIANCE, MONITORING AND REVIEW OF TRANSFER OF TECHNOLOGY

11. Evidence of an operating company's compliance with the requirement for technology transfer in accordance with these regulations shall be—

Evidence of compliance with technology transfer requirements.

(a) the Board's approval of such an operating company's Technology Transfer Program ;

(b) written, unconditional and irrevocable acceptance by an international oil service company to transfer technology in accordance with the Technology Transfer Guidelines ;

(c) written, unconditional and irrevocable acceptance by owners or developers of intangible technology or their designated or accredited experts to educate and train Nigerian citizens in collaboration with Nigerian Science and Technology Parks and universities or other schemes within and outside Nigeria ; and

Funding of Research and Development Projects.

(d) written approval by the Board of the list of Nigerian citizens to be educated and trained and the content of the education and training scheme.

12. An operating company shall facilitate and ensure technology transfer from International Oil Service Companies to Nigerian Indigenous Service Companies in these regulations at a fair value to be approved by the Board taking into consideration the following—

Value of technology transfer.

(i) the nature of the operations ;

(ii) the commercial value of the service contract that it has qualified an international oil service company for ;

(iii) the commercial value of the technology to be transferred in the international market ; and

(iv) the intrinsic value of the technology to be transferred to the Nigerian oil and gas industry.

13. The Board shall facilitate the payment by recipient Nigerian Indigenous Service Companies of the value of technology that they have agreed to receive out of the Nigerian Content Development Fund upon application by such companies.

Payment for technology transfer.

Submission
of annual
report of
technology
transfer.

14. An operating company shall submit an annual Technology Transfer Report which shall include a plan in accordance with section 44 of the Act and a report in accordance with section 46 of the Act.

Such Technology Transfer Report shall include the following information—

(i) nature, type and extent of technological capabilities that it has facilitated for Nigerian citizens ;

(ii) valid Technology Transfer Agreements and Technical Strategic Alliances, as may be relevant ;

(iii) specific level of technology transfer that it has facilitated for Nigerian Indigenous Service Companies ;

(iv) extent of utilization by the Nigerian Indigenous Service Company of technology in respect of its operations ;

(v) number of hardware technology directly acquired by it for its operations ;

(vi) number of hardware technology it has transferred to Nigerian Indigenous Service Companies ; and

(vii) its future technology transfer plans and promotion generally.

Application
of
regulations
to existing
operations.

15. An operating company already engaged in oil and gas operations before the coming into force of these regulations shall comply with the requirement for transfer of intangible technology within a period of 6 months of the coming into force of these regulations.

Application
of
regulations
to existing
contracts.

16. For the avoidance of doubt the provisions of this Regulation are without prejudice to any Technology Transfer obligations that an operating company may have under an existing contract it has entered into.

Monitoring
of
technology
transfer
arrangements.

17. In accordance with its powers in section 4 of the Act, the Board shall from time to time monitor the progress of recipient Nigerian Indigenous Service Companies, Science and Technology Parks, universities and Nigerian citizens to ensure that the objective of technology development in the Nigerian oil and gas industry is achieved efficiently, effectively and speedily.

Creation and
functions of
technology
transfer unit.

18. There shall be created within the Board a Technology Transfer Unit that shall be charged with the following functions, duties and responsibilities—

(a) approve the Technology Transfer Program of operating companies ;

(b) approve the annual Technology Transfer Plan of operating companies ;

(c) from time to time issue Technology Transfer Guidelines for the prescription of a specific quantum of technology to be transferred within the oil and gas industry ;

(d) identify and recommend for approval to the Board recipient Nigerian Indigenous Service Companies, Nigerian Citizens, and Science and Technology Parks and universities ;

(e) monitor Technology Transfer recipients to ensure efficient and effective technological development in the Nigerian oil and gas industry ;

(f) from time to time recommend to the Board fair value of Technology Transfer between recipient transferee companies and transferor companies ;

(g) oversee the transfer and hand over of hardware technology from an Operating Company and Nigerian Indigenous Service Companies ;

(h) evaluate the express written and unconditional acceptance of transfer of proposed transferor of technology ;

(i) evaluate Technology Transfer Agreements and Technical Strategic Alliances in respect of their terms and conditions ;

(j) recommend to the Board incentives to be granted operating companies that are in compliance with the regulations including—

(i) supporting applications for tax credits with relevant agencies,

(ii) supporting applications for import waivers with relevant agencies,

(iii) granting a forbearance on unrelated breaches of the Act or other Regulations under the Act ;

(k) Generally maintain a database comprising of—

(i) all technology applied to oil and gas operations,

(ii) all technology transferred to, and utilized by Nigerian Indigenous Service Companies, and

(iii) all technology transferred to, and shared between Nigerian citizens and international oil service companies.

(l) Where possible, mediate disputes between recipient transferee companies and transferor companies arising from Technology Transfer Agreements and Technical Strategic Alliances ;

(m) Assist recipient Nigerian Indigenous Service Companies in obtaining funding from the Nigerian Content Development Fund to enable them pay for hardware technology and information based technology ;

(n) Collaborate with the Petroleum Technology Development Fund for the funding of Nigerian citizens who are recipients of intangible technology ; and

(o) Generally collaborate with the National Information Technology Development Agency for the promotion of technology transfer and technology development in the Nigerian oil and gas industry.

19. All documents, reports, programs and plans required to be submitted by an operating company to the Board under these regulations shall be supported with a declaration on oath attesting to the accuracy of the information contained in the documentation.

Returns on
technology
transfer to
be on oath.

Discretion of Board where regulations are impracticable to meet.

20. If for any reason the Board has determined that any part of the provisions of this Regulation is not practicable to be fulfilled due to the circumstances in the Nigerian Oil and Gas Industry, the Board shall have the discretion to take decisions for the promotion of technology transfer.

PART IV—ENFORCEMENT OF REGULATION AND SANCTIONS FOR DEFAULT

Enforcement of Regulations.

21.—(a) Any person, Operating company or International Oil Service Company who contravenes any of the provisions of these Regulations, is in breach thereof and is liable to such fines, sanctions or penalties, including any fines, sanctions or penalties determined under the Nigerian Oil and Gas Industry Enforcement and Compliance Regulation 2021 or as may be determined by the Board from time to time.

(b) The enforcement of this Regulation shall be without prejudice to the provision of Section 68 of the Act.

PART V—GENERAL

Interpretation.

22.—(1) In these regulations, unless the context otherwise requires—

“Act” means the Nigerian Oil and Gas Industry Content Development Act 2010 ;

“Strategic Technical Alliance” means any joint venture, partnership or other contractual arrangement facilitated by an operating company under which Nigerian citizens are educated and trained in order to acquire intangible technology capabilities in a way that such beneficiary Nigerian citizens can directly apply technical skills and expertise to the Nigerian oil and gas industry ;

“Board” means the Nigerian Content Development and Monitoring Board ;

“International Oil Service Company” means a company that is engaged to carry out services in respect of oil and gas operations in Nigeria’s oil and gas industry which is not a Nigerian Indigenous Service Company ;

“Nigerian Indigenous Service Company” means a company registered in the Federal Republic of Nigeria, in which Nigerian citizens legally and beneficially own at least 51% of the shareholding of the company which carries out services in respect of oil and gas operations ;

“Operating Company” means a company lawfully engaged in any one or more of crude oil and/or natural gas exploration, drilling, production, processing, storage, transportation, and refining operations in Nigeria ;

“Technology” means the application of scientific, systematic and commercially usable knowledge, information and skills developed outside Nigeria to produce goods, materials, services or processes and utilized by an operating company for the purpose of achieving its operations ;

“Technology Transfer” means, in respect of hardware technology, the transfer of ownership of such technology to Nigerian Indigenous Service

Companies or company in ways prescribed by these regulations ; in respect of information- based technology, the lawful grant to Nigerian Indigenous Service Companies or company to utilize in Nigeria the intellectual property rights of such technology in ways prescribed by these regulations; in respect of intangible technology, the sharing of knowledge and skills with Nigerian citizens through education and training that results in the development of tangible capabilities that are applied to achieve oil and gas operations ;

"Technology Transfer Guidelines" means the guidelines as may be made by the Board from time to time prescribing an appropriate quantum in the case of each type of technology transfer for the operations of operating companies ;

"Technology Transfer Program" means the program to be submitted in accordance with section 43 of the Act by an operating company which seeks to utilise technology provided by an international oil service company, containing details on its proposed use of technology and its plan for technology transfer.

(2) Any term which is defined in the Act and used but not defined in these regulations shall have the same meaning as in the Act.

23. These regulations may be cited as the Nigerian Oil and Gas Industry Content Technology Transfer Regulation, 2021. Short Title.

MADE this 26th day of February, 2021.

TIMIPRE SYLVA

Minister of State for Petroleum Resources