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PETROLEUM INDUSTRY ACT, NO. 6, 2021
MIDSTREAM AND DOWNSTREAM PETROLEUM ALTERNATIVE
DISPUTE RESOLUTION REGULATIONS, 2023



ARRANGEMENT OF REGULATIONS

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S. I. No. 10 of 2023

PETROLEUM INDUSTRY ACT, NO. 6, 2021**MIDSTREAM AND DOWNSTREAM PETROLEUM ALTERNATIVE
DISPUTE RESOLUTION REGULATIONS, 2023**

[14th Day of March, 2023]

Commence-
ment

In exercise of the powers conferred on it by sections 33(t), 120(j), 163 and 179(2) of the Petroleum Industry Act, No. 6, 2021 (“Act”) and all other powers enabling it in that behalf, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“Authority”) makes these Regulations —

1. The objectives of these Regulations are to — Objectives
 - (a) establish the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre ; and
 - (b) provide procedures for timely and cost efficient dispute resolution in the Nigerian midstream and downstream petroleum industry.
2. These Regulations shall apply to activities connected with dispute resolution in midstream and downstream petroleum operations. Application
- 3.—(1) There is established the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre (“Centre”). Establishment of
Midstream and
Downstream
Alternative
Dispute
Resolution
Centre
 - (2) The Centre shall apply Alternative Dispute Resolution (ADR) mechanisms to resolve disputes in the midstream and downstream petroleum industry in a cost efficient and less time-consuming manner.
4. The Centre shall — Powers of
the Centre
 - (a) provide administrative supervision of ADR at the Centre in accordance with the rules adopted by the Centre or those agreed upon by the parties to disputes ;
 - (b) resolve disputes through ADR methods in accordance with the relevant rules adopted by the Centre ;
 - (c) coordinate, cooperate, and conclude agreements and memoranda of understanding with specialised regional and international arbitration institutions and centres which includes exchanging —
 - (i) expertise,
 - (ii) lists of arbitrators, mediators, conciliators or experts, and
 - (iii) other resources;
 - (d) conclude agreements and memoranda of understanding with competent courts within and outside Nigeria on matters related to the —

- (i) enforcement of arbitral awards and decisions issued by the Arbitration Tribunals of the Centre,
- (ii) ratification of settlement agreements mediated by the mediators and conciliators registered with the Centre,
- (iii) ratification of decisions of experts registered with the Centre, in accordance with the procedures and standards adopted by competent courts, and as agreed by the Centre and the court ;
- (e) raise awareness and build capacity on ADR methods by —
 - (i) organising conferences, symposia, workshops, training courses, and
 - (ii) issuing print materials and publications ;
- (f) create a register of members of the Centre and lists of arbitrators, experts, mediators and conciliators qualified and versed in the requirements and procedures of ADR methods ;
- (g) create a database of the decisions issued by the Centre on the recusal and removal of arbitrators, mediators, experts, and conciliators, and publish them on the website of the Centre and its approved digital channels, taking into consideration the confidentiality of the details of arbitrators, experts, mediators, conciliators, and parties to disputes ;
- (h) provide the rules of arbitration, mediation, conciliation and expert determination and the by-laws governing the ADR methods, and publish them on the website of the Centre and its approved digital channels ;
- (i) enforce awards, determinations, decisions, settlements and agreements reached between parties at the Centre by itself, through the Authority or by application to the Federal High Court ; and
- (j) discharge other duties or exercise other powers required to achieve the objectives of the Centre.

Disputes
within the
jurisdiction
of the Centre

- 5.—(1) The Centre shall have jurisdiction in disputes arising from —
- (a) operations between licensees or permit holders in the midstream and downstream petroleum industry ;
 - (b) the provision of open access in gas and petroleum liquids operations ;
 - (c) the provision of third-party access to facilities and infrastructures used for gas and petroleum liquids operations by owners operating on their own account ;
 - (d) gas trading and settlement transactions ;
 - (e) midstream and downstream petroleum labour matters ;
 - (f) referrals to the Centre by a court of competent jurisdiction ;
 - (g) the commercial, technical and operational aspects of midstream and downstream petroleum operations among licensees or permit holders ; and
 - (h) any other dispute involving companies, within or outside Nigeria, in connection with midstream and downstream petroleum operations.

(2) Where it is a condition of its licence or permit, a licensee or permit holder involved in a dispute in respect of midstream and downstream petroleum operations shall submit the dispute to the jurisdiction of the Centre, prior to proceeding with litigation.

6.—(1) The Centre shall utilise the following dispute resolution mechanisms —

Dispute
resolution
mechanisms

- (a) expert determination ;
- (b) conciliation ;
- (c) mediation ;
- (d) arbitration ; and
- (e) any other dispute mechanism the Centre may approve.

(2) The procedures for the use of dispute resolution mechanisms of the Centre shall be as stipulated in the rules or guidelines made in these Regulations.

7. The organisational structure and organs of the Centre shall be as set out in the Schedule to these Regulations.

Organisational
structure of
the Centre
Schedule

8.—(1) The Centre shall fully disclose and explain the basis of compensation, fees, and charges payable by parties submitting disputes to the Centre.

Fees

(2) The parties will be provided sufficient information about fees to determine if they wish to retain the services of the Centre.

(3) The fees of the Centre shall be reasonable, considering, among other things, the type and complexity of the matter, the expertise of the arbitrator, mediator, conciliator or expert and the time required.

(4) Costs and expenses associated with the expert, conciliator, mediator or arbitral panel shall, subject to parties' agreement as contained in their contract or as agreed with the Centre, be apportioned equally between the parties.

(5) The Centre may prescribe the fees payable by the parties in a written agreement.

(6) Each party shall bear the cost and expenses of all professional advisers, witnesses and employees retained by it.

9. The Authority may issue guidelines, rules or directives for the effective implementation of these Regulations.

Authority to
issue rules,
guidelines or
directives

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Interpretation

10. In these Regulations —

“*Act*” means the Petroleum Industry Act No. 6 2021. ;

“*ADR*” means Alternative Dispute Resolution ;

“*ADR methods*” means the ADR methods or type of ADR adopted by the Centre and disputants for the resolution of disputes ;

“*arbitration*” means the procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a final binding decision on the dispute ;

“*Authority*” means the Nigerian Midstream and Downstream Petroleum Regulatory Authority ;

“*Centre*” means the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre established in these Regulations ;

“*conciliation*” means active or passive moderation of the discussions of the parties to a given dispute by a third party, to assist with legal and technical aspects of the matter in question and invite the parties to reach an arrangement that is satisfactory in terms of their interests ;

“*disputant*” means a person who is involved in a dispute relating to midstream and downstream petroleum industry ;

“*dispute*” means any dispute or difference arising between the licensees, permit holders and other persons under or in connection with the midstream and downstream petroleum industry ;

“*expert*” means a person who is knowledgeable in the technical, commercial or legal aspects of midstream and downstream petroleum operations and is appointed by the Centre or disputants to resolve a dispute between them ;

“*expert determination*” means determination of a dispute between parties by an expert in midstream and downstream petroleum operations ;

“*Federal High Court*” has the meaning ascribed to it in the Act ;

“*mediation*” means a process where parties request a third party (the mediator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship ; and

“*negotiation*” means the use of negotiators to settle a dispute.

Citation

11. These Regulations may be cited as the Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023.

SCHEDULE

*Regulation 7*ORGANISATIONAL STRUCTURE OF THE MIDSTREAM AND
DOWNSTREAM ALTERNATIVE DISPUTE RESOLUTION CENTRE*The Centre*

1.—(1) The purpose of the Centre is to use alternative dispute resolution techniques to assist parties to amicably resolve their disputes and arrive at mutually acceptable solutions in a more cost efficient and less time-consuming manner.

(2) The Centre may screen the dispute to determine whether there are any jurisdictional, contractual, or other barriers to proceeding with the dispute particularly in cases in which the parties directly refer the dispute to the Centre.

(3) In instances in which a commercial contract between the parties dictates that the parties attempt to resolve a dispute regarding a particular provision of the contract through a specified process, the screening process should ensure that the relevant sections of the contract are in fact in dispute, and this information can be obtained from the referral forms utilised by the parties when they refer the dispute to the Centre.

Membership of the Centre

2.—(1) Membership of the Centre shall be open to arbitrators, mediators, conciliators and experts in midstream and downstream petroleum operations and shall be granted upon the applicant meeting the membership requirements prescribed by the Advisory Council

(2) The membership of the Centre will include those with expert knowledge and technical experience in the midstream and downstream petroleum industry particularly on the dispute to be resolved.

(3) Members of the Centre must—

- (a) be able to remain neutral and impartial and without judgement;
- (b) have the ability to remain calm under pressure;
- (c) be facilitative rather than directive;
- (d) be able to clarify and address difficult issues;
- (e) have respect for the parties;
- (f) be trustworthy;
- (g) have people skills; and
- (h) have the ability to think outside the box to resolve disputes.

Organisational structure of the Centre

3. The Centre shall have the following organisational levels —

- (a) the Advisory Council ; and
- (b) the Administrative Secretariat.

The Advisory Council

4.—(1) The Centre shall have an Advisory Council comprised of a Chairman, a Vice-Chairman, and other members, who are highly qualified and experienced at local and international levels in petroleum operations, law, petroleum economics, business administration, financial services, ADR methods, and other relevant fields.

(2) The Advisory Council shall consist of not more than nine members.

(3) The Advisory Council shall comprise of—

(a) the Authority Chief Executive who shall be the Chairman ;

(b) a retired judge, not below the rank of a Federal High Court judge, who shall be the Vice-Chairman ;

(c) one Executive Director of the Authority ;

(d) the Secretary and Legal Adviser of the Authority ;

(e) one representative of the Nigerian Bar Association ;

(f) three independent members from midstream and downstream petroleum industry ; and

(g) the Centre Coordinator who shall be the Secretary to the Advisory Council.

(4) Members of the Advisory Council shall be appointed by the Authority Chief Executive.

(5) Where the post of Chairman falls vacant for any reason, the Vice-Chairman will act as the Chairman until a new Chairman is appointed.

(6) The Vice Chairman of the Advisory Council will exercise the powers vested in the Chairman pursuant to the provisions of this regulation in case of his absence or inability to perform his duties for any reason whatsoever.

(7) Where the post of a member of the Advisory Council falls vacant for any reason, the Advisory Council will continue to perform its duties, provided that the number of the remaining members, including the Chairman and Vice Chairman, is not less than two-thirds of the original number of members.

(8) A member of the Advisory Council shall not serve as an arbitrator, mediator, conciliator or expert in any dispute brought before the Centre.

Tenure of membership of the Advisory Council

5.—(1) The members from the Authority shall serve for the duration of their appointments.

(2) The Vice-Chairman, representative of the Nigerian Bar Association and members from midstream and downstream petroleum industry shall serve for a non-renewable term of two years from the date of their appointment.

(3) Where a new member is appointed in place of another member of the Advisory Council the new member will serve for the remainder of the term of his predecessor.

(4) Where the Advisory Council is not reconstituted upon the expiry of its term of office, the Advisory Council whose term has expired will continue to perform its duties until a new Advisory Council is constituted.

Functions of the Advisory Council

6.—(1) The Advisory Council will undertake general supervision of the Centre, and for this purpose will have the duties and powers to —

(a) approve, and supervise the implementation of the general policy and strategic plans required for the achievement of the objectives of the Centre ;

(b) approve the rules of arbitration, mediation and conciliation applied by the Centre which shall be in accordance with international best practices ;

(c) approve the organisational structure of the Administrative Secretariat, the by-laws and guidelines governing the administrative, financial, and technical affairs of the Centre ;

(d) ratify the appointment of the Centre Coordinator ;

(e) approve the lists of Centre arbitration, mediation and conciliation fees, including the fees of the arbitrators, conciliators, and experts engaged by the Centre, and the charges for all other services provided by the Centre in respect of ADR methods ;

(f) approve the by-laws prescribing the requirements and procedures for —

(i) membership of the Centre,

(ii) registration on lists of arbitrators, mediators, conciliators, and experts, and

(iii) all other services provided by the Centre in respect of ADR methods ;

(g) approve fees for –

(i) categories of the membership of the Centre,

(ii) registration of arbitration claims,

(iii) registration on lists of arbitrators, conciliators, and experts, and

(iv) all other services provided by the Centre ;

(h) review and approve the annual report on the performance, work, achievements, and activities of the Centre ;

(i) approve the annual budget and financial statements of the Centre;

(j) appoint, remove, and determine the remuneration of the external auditors of the Centre, review and approve the financial reports and notes

submitted by these auditors at the end of each financial year ;

(k) form advisory committees to assist the Advisory Council in the discharge of its duties and determine the duties, powers, and tenures of these committees ;

(l) approve the codes of conduct and professional ethics for arbitrators, mediators, conciliators, and experts, and for all other services provided by the Centre in respect of ADR methods ;

(m) approve the governance rules regulating the work of the Advisory Council, arbitration panel, and subcommittees ;

(n) propose policies and conduct studies on arbitration, conciliation, and ADR methods, and present same to the concerned entities in Nigeria to take the necessary action ; and

(o) exercise other duties or powers required to achieve the objectives of the Centre.

(2) The Advisory Council may delegate any of its powers under this Schedule to the Chairman, provided that such delegation is specific and in writing.

(3) The Chairman may sign cooperation agreements and memoranda of understanding with specialised local and international dispute resolution centres and institutions in consultation with the Advisory Council, and the Chairman may delegate this power to any member of the Advisory Council, provided that such delegation is specific and in writing.

Meetings of the Advisory Council

7.—(1) The Advisory Council shall convene a meeting at the invitation of the Chairman or the Vice-Chairman, where the Chairman is absent, at least once every three months, where necessary, or upon the request of the Centre.

(2) Invitations to meetings of the Advisory Council will be sent to all members in accordance with the procedures prescribed by the Centre, and the letter of invitation must include the agenda, time, and venue of the meeting.

(3) Meetings of the Advisory Council will be chaired by the Chairman, or the Vice-Chairman where the Chairman is absent, and in case of absence of both the Chairman and the Vice-Chairman, the Advisory Council will elect from amongst its members the chair of the meeting, in which case the Chairman and Vice-Chairman will be provided, immediately upon the end of the meeting, with copies of the resolutions passed.

(4) Subject to subparagraph (3), meetings of the Advisory Council will be valid only if attended by the majority of its members.

(5) The Advisory Council may hold its meetings and pass its resolutions and recommendations using means of electronic communication, as prescribed

by by-laws of the Centre.

(6) Resolutions and recommendations of the Advisory Council will be passed by majority vote of the attending members, and where there is a tie, the Chairman of the meeting will have the casting vote.

(7) Resolutions and recommendations of the Advisory Council will be recorded in minutes signed by the Chairman of the meeting and members present.

(8) Where the subject matter of a meeting is related to amending these Regulations, the rules of arbitration and conciliation, any of the services provided by the Centre in respect of the ADR methods, or any of the by-laws of the Centre, the meeting will be valid only if attended by at least two-thirds of the members of the Advisory Council :

Provided that the Chairman or Vice-Chairman is in attendance, and in this case, the resolutions of the Advisory Council will be passed by a majority vote of at least three-quarters of the members present.

(9) The Chairman may form permanent or temporary subcommittees from amongst the members or other persons to assist the Centre in the discharge of its duties under these Regulations.

Termination of membership

8.—(1) The membership of the Advisory Council or the Centre will be terminated upon —

- (a) death ;
- (b) declaration of bankruptcy or insolvency;
- (c) resignation or retirement from the service of the Authority or termination of appointment by the Authority ; or
- (e) conviction by a court of competent jurisdiction on a crime affecting honour or trustworthiness.

Administrative Secretariat

The Centre Coordinator

9.—(1) The Authority Chief Executive and Chairman of the Advisory Council shall appoint a Centre Coordinator for the management of the Centre subject to ratification by the Advisory Council

(2) The Centre Coordinator shall report to the Authority Chief Executive and Chairman.

(3) The Centre Coordinator shall be an officer of the Authority with the following qualifications —

- (a) a legal practitioner with a minimum of 20 years post call to the Nigerian Bar experience.

- (b) minimum of 10 years service in the Authority ; and
- (c) professional membership and certification from a recognised ADR institution.

(4) The Centre Coordinator shall serve for a term of two years which is renewable on satisfactory performance for a further term of two years.

(5) The Centre Coordinator may be relieved of his appointment by the Authority Chief Executive and Chairman subject to ratification of the Advisory Council.

Functions of the Centre Coordinator

10. The Centre Coordinator shall —

(a) undertake management of the Centre and supervision of its work and propose the by-laws governing the administrative, financial, and technical work of the Centre, including human and technological resources, and submit to the Advisory Council for approval ;

(b) supervise the implementation of the approved annual budget of the Centre ;

(c) supervise the work of the Administrative Secretariat of the Centre, and nominate competent and specialised members ;

(d) attend the meetings of the Advisory Council and participate in the discussions and deliberations taking place during these meetings, without the right to vote on the resolutions and recommendations of the Advisory Council ;

(e) propose, in coordination with the Centre, the fees for registration on lists of arbitrators, mediators, conciliators, and experts, and for all other services provided by the Centre in respect of ADR methods, and submit to the Advisory Council for approval ;

(f) sign documents on behalf of the Centre in respect of all administrative and financial matters, in accordance with the standards of the Authority adopted by the Centre ;

(g) propose the list of fees of the arbitrators, conciliators, and experts engaged by the Centre and of all other services provided by the Centre in respect of ADR methods, and submit to the Advisory Council for approval ;

(h) propose, in coordination with the Chairman, plans for training and qualifying arbitrators and mediators, and present them to the Advisory Council for approval ;

(i) propose amendments to these Regulations and submit to the Advisory Council for approval ;

(j) appoint dispute resolution panels in accordance with the rules adopted by the Centre ;

(k) determine requests for recusal, removal, or reconsideration of appointment of arbitrators, mediators, conciliators and experts and provide reasons for such recusal, removal, or reconsideration of appointment, in accordance with the rules of arbitration and conciliation adopted by the Centre ;

(l) supervise the review of draft arbitral awards and decisions in terms of form before their approval by arbitrators, in order to ensure their validity and convenient enforceability ;

(m) propose the list of fees of the arbitrators, conciliators, and experts engaged by the Centre and of all other services provided by the Centre in respect of ADR methods, and submit to the Advisory Council for approval ;

(n) propose the codes of conduct and professional ethics for arbitrators, mediators, conciliators, and experts, taking into consideration the principles of good governance, transparency, integrity, and justice ; and submit to the Advisory Council for approval ; and

(o) assist the Advisory Council in all matters referred to the Centre, when so requested.

Functions of the Administrative Secretariat

11. The Administrative Secretariat of the Centre, under the supervision of the Centre Coordinator shall —

(a) provide administrative support services to the Centre ;

(b) provide translation and logistic services related to arbitration and conciliation hearings ;

(c) record and maintain the minutes of meetings of the Centre, and the sub-committees ;

(d) notify the parties to disputes of the date, time, and venue of dispute resolution hearings where requested by the Centre, arbitrators, mediators, conciliators or experts ;

(e) provide the parties to disputes, upon their request, with names of arbitrators, mediators, conciliators, and dispute settlement experts and specialists depending on their qualifications, experience, and areas of expertise ;

(f) create a register to keep the files of dispute resolution matters and maintain the original copies of the awards, decisions, judgements, settlement and agreements of the Centre ;

(g) provide information on arbitration and conciliation, and explain the procedures adopted in dispute settlement ;

(h) prepare the forms necessary for arbitration and conciliation proceedings, particularly the conflict of interest disclosure forms ;

(i) prepare, maintain, and regularly update electronic lists of the names of arbitrators, conciliators, and experts, and a register of Centre members, containing their respective addresses and specialties ;

(j) prepare a register of the decisions issued by the Centre regarding the recusal and dismissal of arbitrators, conciliators, and experts, and provide a summary of, and the reasons for such decisions for the purposes of their publication on the website of theCentres, taking into consideration the confidentiality of the details of arbitrators, conciliators, experts, and parties to disputes ;

(k) manage and periodically update the website of the Centre ;

(l) submit to the Chairman reports on performed tasks and on the future plans required for achieving the objectives of the Centre ;

(m) conduct a periodic review of the arbitration and conciliation rules and the regulations and the services provided by the Centre in respect of ADR methods, and conduct benchmarking with the best rules and by-laws adopted by other local and international arbitration centers and institutions ;

(n) organise and participate in symposia, lectures, training courses, and workshops on ADR methods ;

(o) supervise the processes of coordination and collaboration with local and international arbitration centres and institutions specialised in areas that serve the objectives of the Centre ;

(p) consider the applications for registration on lists of arbitrators, conciliators, and experts, and applications for membership of the Centre ; and

(q) discharge other duties or exercise powers that are assigned to it by the Chairman through the Centre Coordinator that are required for performing the functions of the Centre.

Fund of the Centre

12. The Fund of the Centre shall consist of —

(a) funds provided by the Authority for the Centre ;

(b) fees charged by the Centre for registration of applications for arbitration, conciliation, and other ADR methods ;

(c) fees charged by the Centre for registration on the lists of arbitrators, conciliators, mediators and experts ;

(d) fees charged by the Centre for memberships, publications and trainings undertaken by the Centre ;

(e) revenues received by the Centre in return for carrying out activities and providing services ;

(f) funds and grants accruing from multilateral agencies, bilateral institutions and related sources dedicated partly or wholly for the furtherance of ADR in midstream and downstream petroleum operations in Nigeria ;

(g) any other sum, freely donated or accruing to the Centre for the furtherance of ADR in midstream and downstream petroleum operations in Nigeria ; and

(h) any other financial resources that may be approved by the Advisory Council.

The Centre's accounts and financial year

13.—(1) The Centre will apply accounting rules and principles in accordance with recognised international standards, in managing its accounts and records.

(2) The financial year of the Centre will commence on 1st January and will end on 31st December of each year.

Representation of the Centre

14.—(1) The Centre Coordinator will represent the Centre before entities and judicial authorities.

(2) The Centre Coordinator may delegate the power in subparagraph (1) to an officer of the Centre, provided that such delegation is specific and in writing.

Registration on the lists of arbitrators, mediators, conciliators, and experts

15. Registration on the lists of arbitrators, mediators, conciliators, and experts will be subject to, and in accordance with conditions prescribed by the Advisory Council.

Confidentiality and conflict of interest

16.—(1) Meetings and deliberations of the Advisory Council, the Administrative Secretariat, and the subcommittees will be held in camera.

(2) A member of the Advisory Council or the Administrative Secretariat shall not attend or participate in meetings or vote on any matter or decision to which he is party, in which he has a direct or an indirect interest, or in respect of which he is an agent, a legal representative, a guardian, or a custodian of one of the disputants.

(3) A member of the Advisory Council or the Administrative Secretariat must disclose such a relationship or conflict of interest.

(4) The members of the Advisory Council, the subcommittees and the employees of the Administrative Secretariat of the Centre shall not disclose or divulge, during or after their term of service with the Centre, any information or documents related to the work or services of the Centre.

(5) All information provided by the parties to a dispute are deemed confidential, and any person who gains access to such information must not disclose or divulge it without the written consent of the parties to the dispute or a request of a competent judicial authority.

Independence and impartiality in discharging duties

17.—(1) The officers of the Centre, in discharging their duties must act independently and impartially.

(2) Arbitrators, mediators, conciliators and experts, in discharging their duties in respect of considering and determining arbitration claims, are deemed independent of the officers of the Centre and are not bound by any instructions in discharging the duties related to such claims.

Exemption from Liability

18.—(1) The Chairman, member of the Advisory Council, a subcommittee, or any employee of the administrative Secretariat of the Centre shall not, in the course of discharging his duties at the Centre, incur civil liability for any act or omission committed by him as a result of an inadvertent error.

(2) The Centre shall be solely and vicariously liable for the act or omission under subparagraph (1).

Notices and communications

19.—(1) All notices, communications, and correspondence to the Centre must be in writing and may be dispatched by the means of communication specified by the Centre.

(2) The notices, communications, and correspondence referred to in subparagraph (1) will take effect as of the day following delivery to the Centre.

Made at Abuja this 14th day of March, 2023.

ENGR. FAROUK AHMED
Authority Chief Executive
Nigerian Midstream and Downstream
Petroleum Regulatory Authority