Terms of Reference for producing Ghana's second EITI Commodity Trading Report

Background:

The EITI is a global body committed to promoting transparency and accountability in the management of a country's natural resource wealth for the benefit of all its citizens. Ghana became an EITI implementing country in 2003 and was the first country to cover the mining sector in EITI reporting. Since the discovery of oil in commercial quantities in 2007.Ghana EITI expanded its scope to cover revenues from the petroleum sector and produced its first oil/gas report in 2011. GHEITI has been key in providing increasingly comprehensive information on the country's extractive industries.

One of the direct fiscal benefits from the oil and gas industry are derived from revenues from the sale of the resources. Oil and gas contracts provide for the sharing of physical crude oil between an investor and the owner of the resource, typically under production sharing contracts. Most resource owners have established National Oil Companies (NOC), who hold their share of production in trust for the people, and usually have the mandate to dispose of the state's share of production to help finance the country's developmental programmes. On the other hand, investors, usually international oil companies (IOCs), often establish trading arms or subsidiaries who oversee their sale of crude. Whereas the basis for production sharing is often provided in petroleum agreements, the rules and processes that guide the sales of crude are usually not disclosed. These include the selection of buyers, sales contracts, agreed price, related party transactions, among others. International Organisations such as EITI, UNCTAD and OECD have pushed for increased transparency in commodity trading, with underlying objectives being to prevent corruption, curtail mismanagement and loss of public revenue and illicit financial flows from commodity dependent developing countries. These heightened global interests underscore the need for national level actions on commodity trading transparency.

To sum up, the message of this paper is that NOCs are on the rise because they offer several advantages relative to IOCs. At the same time, these NOCs can do still better if they can learn a variety of practices that the IOCs have perfected, namely in dealing with different international financing and taxing authorities, cooperating with one another to utilize their most advantageous skills, finding ways to mitigate risks, acquiring and retaining the best intellectual capital in the most cost-effective ways.

EITI Reports have shown that these SOEs and IOCs play an important role in producing, transporting, refining and selling oil, gas and minerals on behalf of their governments and shareholders respectively. Many governments of resource rich countries receive much of their share of revenues from oil and gas activities "in-kind" rather than in cash payments. The state or the SOE then sells these physical

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

resources and transfers the proceeds to the governments. The IOCs also invest their resources in undertaking exploration, development and production of crude oil and gas with a view to making profit to take care of their operations and satisfy their shareholders' interest through enhanced shareholder-value.

Given the relevance of oil and gas resources to many resource rich countries, the high risks associated with management of state assets and complexity of the transactions, the EITI Board assisted a number of countries including Albania, Chad, Ghana, Indonesia and Nigeria to conduct a pilot project that supported implementing countries where commodity trading is relevant. The project sought to shed light on the sale of "in-kind" revenues, by encouraging consistent and extensive reporting on commodity trading and sharing of best practices. Transparency in commodity trading including information on the parties in the transaction and the factors influencing the sales is important in providing a full picture of governments' revenues and management of natural resources.

The EITI Standard includes provisions requiring disclosure of the sales of the state's share of production and other 'in-kind' revenues (EITI Requirement 4.2):

> *"Where the sale of the state's share of production or other revenues collected in-kind is material, the government, including state owned enterprises, are required to disclose the volumes sold and revenues received."*

According to this requirement, all material commodity sales by SOEs or other government agencies related to the government's share of production or other revenues collected in- kind must be disclosed in the EITI Report, including exports sales as well as sales to domestic buyers and refineries. This typically means that state-owned enterprises (SOEs) will disclose the volumes of commodities sold and the revenues received, broken down by buying company. In some countries, like Iraq, the buyers of the oil from the government also disclose how much they pay to the government, allowing an Independent Administrator to reconcile these figures in EITI reports[1].

[1] See Iraq's 2013 EITI Report, in which USD 80 billion of government revenues were reconciled on the EITI website https://eiti.org/report/iraq/2013

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

Box 1: EITI Requirement 4.2

4.2	**Sale of the state's share of production or other revenues collected in-kind.** Where the sale of the state's share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated by individual buying company and to levels commensurate with the reporting of other payments and revenue streams (4.7). Reporting could also break down disclosures by the type of product, price, market and sale volume. Where practically feasible, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.

The Case for Expanding the CT Scope to Cover IOCs:

While GHEITI found the Commodity Trading pilot project useful in highlighting potential risks of revenue losses and establishing the need for a national policy on crude oil pricing, the MSG found the exercise a bit limiting in terms of scope.

In its review of the pilot exercise, the MSG adduced three substantial reasons why the scope ought to be expanded to cover the International Oil Companies' first oil trades. These are:

1. Much as the pilot provided insight into the pricing of Ghana's share of crude oil produced in the country, the unavailability of sales data from the Corporation's partners (IOCs), does not allow for a comparative analysis of the efficiency and competitiveness of GNPC's achieved prices.
2. To the extent that taxes paid by IOCs are calculated on the basis of their profits, and given that, profits are a function of achieved prices and cost recovered, the availability of IOCs' sales data will give accountability actors the assurance of integrity in the values paid by IOCs as taxes.
3. The availability of IOCs data is again, useful in detecting Illicit Financial Flows (IFF) and its predicate forms such as Transfer Pricing, Base Erosion and Profit Shifting (BEPS) and under-invoicing in the oil and gas sector.

In view of the growing importance of commodity trading transparency globally, and efforts Ghana is making to consolidate the gains documented in the pilot report on GNPC's first trades, Ghana and the EITI International Secretariat have reached an agreement to scale up its Commodity Trading work in a second phase of reporting. This provides an opportunity for GHEITI to deepen its work on the disclosure of information on the IOCs' crude oil sales and state's in-kind revenues beyond what is currently disclosed in the EITI Report or required by the EITI Standard.

Objectives of the 2nd commodity trading report:

GHEITI and its key stakeholders in Ghana have agreed on the following objectives for their participation in the 2018 - 2020 commodity trading transparency report:

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

3

1. Improving transparency in the sale of government's and IOCs' share of oil and gas production to further enhance the demand side of accountability in commodity trading;
2. Improving oversight by accountability actors, over the sale of the government's and the IOCs' share of oil and gas production;
3. Developing a framework for disclosure of timely and reliable information on sales of "in-kind" revenues, drawing from, and building on existing disclosure practices such as the EITI's Reporting Guidelines for Buyers;
4. Providing details on the process followed for the selection of buyers/sellers and evaluation criteria by both NOCs and IOCs;
5. Leveraging on the existence of legal framework and systems deployed to extend the disclosure of beneficial owners of buyers of crude oil sold and bought by GNPC and the IOCs respectively; and
6. Drawing lessons from the pilot and the second CT to be produced for mainstreaming Commodity Trading transparency in Ghana's EITI reporting.

Revised Scope of Work for Ghana's 2nd Commodity Trading Report:

The second CT report is meant to support the data disclosures by GNPC, GNGC and IOCs for sales of oil and gas in Ghana. By asking buyers to also disclose their data, this second report will serve to ensure the reliability of the data through reconciliation.

The Consultant shall also provide an overview of the legal and regulatory framework for oil and gas trading in Ghana, including:

- A description of the commodity sales process, key actors, and transactions.
- Discussion on current issues relevant to the trading of oil & gas in Ghana and how the information in the Commodity Trading report can address these problems and be aligned with ongoing reforms in the sector.
- Provide an analytical review of the current situation of commodity trading reporting and guidelines in Ghana.
- Identify existing gaps, issues and weaknesses that could be strengthened to ensure transparency in commodity trading reporting of oil & gas sector.

In consultation with the MSG, the consultant shall define the scope of information to be collected by SOEs/IOCs and buying companies, based on the information listed in annex A, the consultant shall collect, review and analyse data on:

- Volumes/liftings of crude oil and gas from all producing fields received and sold by the government, IOCs or by third party on behalf of the government.

- Sales data from buyers based on volumes received from GNPC, GNGC and the IOCs and payments made for the purchase of crude oil and gas in accordance with the EITI Reporting Template for Buying Companies including conducting orientation workshops to help the buyers fill in the templates;
- Conduct a post-hoc reconciliation of data provided by GNPC/GNGC/IOCs on their website or templates shared with them and data from buyers received through the second phase of the CT report.

The published data shall be disaggregated by individual buying company and to levels commensurate with the reporting required under requirement 4.7 (Level of disaggregation)

The Consultant shall present a clear description of the flow of funds from the sales of oil and gas into and out of the PHF. The Report shall review:

- The revenues received from the sale, and the revenues transferred to the PHF from the proceeds of oil and gas sold. Where applicable, this should include payments (in cash or in-kind) related to swap agreements and resource-backed loans.
- Interest/Investment by GNPC and GNGC including loans or loan guarantees with the objective of assessing the impact of any such transactions on government share of proceeds;

On the process of pricing government's crude oil and gas, the consultant shall undertake;

- A review of the procedures for price setting of government crude oil;
- A review of crude sales to the buyers;
- A review of the procedures for pricing of gas; and
- An assessment of whether Ghana succeeded in realizing revenues from sales of all its commodities in a manner that is consistent with market conditions.

On process and criteria for buyer/trader selection process, the consultant shall:

- Provide a description of the process for selecting the buying companies, e.g. a tender for a specific cargo, or the selection of term contract recipients;
- Tendering processes including technical and financial criteria used for crude pricing and trader selection, and deviations from applicable legal and regulatory frameworks;
- Provide a list of selected buying companies, including any consortium if applicable;
- Provide and explain any special exemption and/or other deviation from the applicable legal and regulatory framework.

On contract disclosure, the Consultant shall:

- Identify the types of sales contracts used, explaining their key attributes and terms; and
- Obtain the full text of a standard sale contract along with the text of any agreements that allow deviations from a standard contract.

On Beneficial Owners of trading companies, the Consultant shall:

- Collect and present information on beneficial owners of trading companies according to EITI Requirement 2.5 of the 2016 EITI standard.

Based on the findings and recommendations of the report, suggest innovative approaches beyond the EITI's minimum disclosure requirements on the sale of oil and gas in Ghana.

The consultant shall present a comprehensive report of its findings and recommendations as follows;

1. **Preliminary analysis and inception report:** The objective of the first phase of work is to clearly establish the scope of the EITI reporting process, the reporting templates, data collection procedures, and the schedule for publishing the EITI Report. The findings from this first phase shall be documented in an inception report. The Consultant is expected to undertake the following tasks:

   - A definition of SOEs/IOCs consistent with Requirement 2.6 a;
   - A definition of what constitutes "in-kind" revenues;
   - A statement of materiality confirming the MSG decision with regards to the sale of the IOCs' share of production/revenues as well as state's share of production or other revenues collected "in-kind";
   - A statement of the scope of the report and level of disaggregation;
   - The Consultant shall provide the relevant background information, assessment of the legal and regulatory framework including the governance arrangements and tax policies in the oil and gas industry as it relates to commodity trading;
   - Provide a brief overview of the SOE, its relevant subsidiaries and all other government agencies that participate in the production, sales and lifting of all government crude oil and gas. This shall also include government agencies that participate it the collection or management of the proceeds from the sales of same;
   - The Consultant shall examine the audit and assurance procedures in the government entities participating in commodity trading. This includes examining the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards;

   The Consultant shall review the reporting templates with a view to assessing adequacy or otherwise of same. Where inadequate, the Consultant is expected to recommend changes to the MSG to ensure all required data is sufficiently collected.

2. **Data collection**

   - The consultant shall distribute the reporting templates and collect the completed template directly from the participating reporting entities, as well as any contextual or other information that the MSG has tasked the consultant to collect in accordance with the Scope of work enumerated above.

3. **Draft and final reports**: Produce a commodity trading report in accordance with the objectives and scope agreed by the MSG. The report should also provide recommendations on policy gaps identified during the reporting process.

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

- The draft Commodity Trading Report should include a description of each component of the production and revue streams, related materiality definitions and thresholds (Requirements 3.2, 4.1). The Consultant should document the options considered and the rationale for establishing the definitions and thresholds.
- The Commodity Trading Report should include an assessment from the Consultant on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the Consultant and the limitations of the assessment provided.
- The report should include an assessment of whether all companies and government entities within the agreed scope of the reporting process provided the requested information. Any gaps or weaknesses in reporting to the Consultant must be disclosed in the Report, including any entity that failed to comply with the agreed procedures, and an assessment of whether this is likely to have material impact on the comprehensiveness of the report.
- The Commodity Trading Report should document whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the Report advises readers on how to access this information.

- Evaluate the findings of the commodity trading report. The consultant should provide guidance to the MSG in producing a brief evaluation note, documenting the key findings and recommendations of the commodity trading report and next steps in terms of addressing the recommendations. The Consultant should submit summary data from the Commodity Trading Report electronically to the GHEITI Secretariat according to the standardized reporting format required by the EITI.

4. **The consultant is expected to submit the following deliverables:**

- Project implementation schedule (PIS) within 2 weeks of commencement of the assignment
- An inception review report within 5 weeks from commencement of the assignment.
- Draft commodity trading report within 11 weeks of commencement of the assignment.
- Final commodity trading report within 15 weeks of commencement of the assignment.

Consultant's Qualifications:

The consultant must be a reputable firm perceived by the MSG to be credible, trustworthy and technically competent. The consultant must have the capacity to perform reconciliation applying international professional standards (requirement 4.9). Bidders must follow (and show how they will apply) the appropriate professional standards for the reconciliation/agreed-upon-procedures in preparing their report.

The consultant will need to demonstrate:

- Expertise and experience in the extractive sector, preferably in Ghana;
- Expertise in accounting, marketing, auditing and financial analysis; and
- A track record in similar work. Previous experience in EITI reporting is not required, but would be advantageous.

In order to ensure the quality and independence of the exercise, the consultant is required, in their proposal, to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided.

Schedule:

Activity	Date (Draft)
Execution of contract	2 weeks after advertisement
Submission of inception report	5 weeks after contract signing
Submission of first draft of Commodity Trading Report	6 weeks after inception report
Stakeholders' validation workshop	3 weeks after first draft report
Submission of final report	4 week after validation workshop
MSG's approval of the final report	2 weeks after final report
Publication of evaluation note by the MSG	3 weeks after MSG'S approval
Stakeholder consultations and workshops on the findings and recommendations	To be discussed by the MSG

Procurement procedure

A consultant will be selected following a quality- and cost-based selection procedure.

Consultants should submit:

- A **Technical Proposal**, outlining: (a) the experience of the firm / consultants, (b) the proposed methodology and work plan in response to the Terms of Reference (TORs) and (c) the key experts' qualifications and competence. The Technical Proposal should not include any financial information. Technical proposals containing material financial information shall be declared non-responsive.
- A **Financial Proposal**, clearly indicating a lump sum financial proposal, inclusive of all costs associated with required travel and applicable taxes. The financial proposal should clearly differentiate fees from any other reimbursable expenses. The daily rate for the consultant fees should be clearly indicated. The Financial Proposal should be sent as a password protected PDF file. The passwords should not be sent. The passwords will be requested following the assessment of the technical proposals.

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

Proposals must be delivered by email to skasimova@eiti.org by 21 October 2020.

The criteria for assessing the technical proposals is as follows:

Criteria	Weighting
Experience of the Consultant (as a firm) relevant to the Assignment	10%
Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs)	50%
Key Experts' qualifications and competence based on the Qualification requirements (see section 5 above)	40%

The weights given to the Technical (T) and Financial (P) Proposals are:

T = 70%

P = 30%

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: S = St x T% + Sf x P%.

Contract negotiations will be held with the highest ranked firm. If contract negotiations are unsuccessful, negotiations will be held with the next highest ranked firm.

Reporting:

The consultant will report to the MSG of GHEITI and/or to the International EITI Secretariat through the GHEITI Secretariat.

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org