

## TERMS OF REFERENCE

### LEITI BENEFICIAL OWNERSHIP DISCLOSURE CONSULTANCY SERVICES

#### **BACKGROUND**

The Liberia Extractive Industries Transparency Initiative (LEITI) is a partnership involving the Government of Liberia (GoL), the Private Sector and the Civil Society. The initiative is supported by the Government, African Development Bank, United Nations Development Program and other development partners. The LEITI seeks to ensure transparency over payments to, and revenues received by, the Government connection with the operations of all oil, mining, logging and agriculture companies operating in Liberia. To ensure that Liberian citizens benefit fully from the oil, mining, forestry and agriculture sectors, LEITI also reconciles that the amount paid is what ought to have been paid by concessionaires, as mandated by law. Further, LEITI is mandated to ensure contract transparency through periodic review/audit of the processes leading to the award of material concession rights. In May 2013, LEITI published its first Post Award Process Audit report which disclosed major lapses in the way the GoL assigned concession rights during the July 13, 2009 - December 31, 2011 period. This was seen as a major breakthrough in the nation's quest to ensure transparency within the extractive sectors, and it is argued that this sort of effort must be combined with other efforts to strengthen resource transparency in the Liberia.

#### **PURPOSE**

At the 2013 EITI Global Conference held in Australia, the EITI adopted its New Standards aimed at strengthening and advancing its work to ensure citizens of resource rich countries (truly and concretely) benefit from their resources. One of the many requirements (key features) of the New Standards is the disclosure of mineral rights' true ownership. Beneficial owner(s) is a person(s) who directly or indirectly ultimately owns or controls a corporate entity, a licence or other property<sup>1</sup>.

Specifically, Section 3.11 of the New Standards recommends that "implementing countries maintain a publicly available register of the beneficial owners of the corporate entity that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership."

It is also keen to note that Liberia own laws, Freedom of Information Act 2008 and Associations Law of 1976 and revised in 2002 underscored the fundamental need for access to information to ensure public trust. Section 2.2 (a) of the Freedom of Information Act gives "the right of members of the public to access information held by public authorities and private bodies performing public functions is a fundamental human right guaranteed under international human rights law, including human rights instruments to which Liberia voluntarily acceded." Further, Section 2.2 (d) says "it is in the national security interest of the Republic of Liberia to legally guarantee the right of its citizens to public records, as this will enhance democratic participation by the citizens and good governance"<sup>2</sup>.

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<sup>1</sup> [http://eiti.org/glossary#Beneficial\\_ownership](http://eiti.org/glossary#Beneficial_ownership)

<sup>2</sup> [Freedom of Information Act of 2008](#)

The United Nations Security Council through the Ministry of Justice have also sought similar information from LEITI in 2013 in the disclosure of ownership in the extractive sectors.

To support the EITI Standard and its own efforts on resource transparency in Liberia, the Multi-stakeholder Steering Group of LEITI approved the review of a Beneficial Ownership Disclosure of all material rights assigned in the oil, mining, agriculture and forestry sectors in the Work Plan for 2013/14.

## **FUNDING**

1.0 The Liberia Extractive Industries Transparency Initiative (LEITI) has received support from the United Nations Development Program (UNDP), under its Private Sector Development (PSD) Program and intends to apply a portion of this grant to hire the services of an reputable audit firm/consultant, on a short-term basis, to collate, catalogue and compile a database of all material ownerships in its oil, mining, forestry and agriculture sectors.

### **2.0 TERMS OF REFERENCE / SCOPE OF WORK**

Generally, the consultant will compile a database of all natural person(s) or institutions (i.e. including state-owned or intermediaries, having ownership rights of not less than ten (10) percent in each entity involved in extraction/exploitation of Liberia's mining, oil, forestry and agriculture sectors between July 13, 2009 and December 31, 2013. The threshold shall however be linked to its relative dollar value so that it is easily understood the individual or institution's dollar ownership in the extractive company. The Multi-stakeholder Steering Group (MSG) of LEITI will review and approve a materiality threshold of all companies that are subject to the review, based on which the consultant will conduct its work.

More specifically, the scope of services to be provided by the consultant shall include, but not limited to, the following:

- A. Develop appropriate templates to be used by extractive companies, agencies of government and others interested (third) parties in the beneficial ownership disclosure process; such template(s) shall include provision for attestation by senior person(s) of the extractive company, and approved by the MSG prior to data collection;
- B. Collate from multiple sources, including agencies of government and extractive companies, the names, date of birth, address(es), contact information, employment/business history, nationality, and other relevant information of all owners (shareholders) with not less than 10% ownership of shares (aggregate or otherwise) issued by companies in the oil, mining, agriculture and forestry sectors;
- C. Further to Count B above, and in the instance where a single individual does not own at least ten (10) percent in a mining, oil, forestry or agriculture company, the

consultant shall include in the report a listing of the top five shareholders with the greatest percentage of ownership (shares) rights;

- E. Where the immediate ownership is an intermediary or another legal entity (not a natural person), the consultant shall clearly define the links up to its natural ownership;
- F. Collate from multiple sources including agencies of government and extractive companies the names, addresses, contact information, employment/business history, nationality, and other relevant information of all registered agent(s), incorporators, directors, etc. of companies operating in the oil, mining, agriculture and forestry sectors in Liberia;
- G. Where there are changes in ownership during the period under review, the consultant must clearly define those changes by fully disclosing the new beneficiaries owning not less than ten (10%) percent in aggregate shares under the new ownership arrangement; such disclosure must contain the names, addresses, contact information, nationality, employment/work history and other relevant information;
- H. The Consultant shall submit a comprehensive final report to the MSG on the key findings of the evaluation disclosure process. Said report, amongst other areas, must also take into account the following:
  - i. description of any bottlenecks or challenges in its work and how to mitigate said challenges in future exercises;
  - ii. description of any issues relating to Conflict of Interest (perceived or otherwise) by holders of concession rights in keeping with Liberian Laws and/or international best practices.
- I. The Consultant shall submit a reporting template(s) for review and MSG approval within 15 days from the signing of the contract;
- J. The Consultant shall submit an inception report which maps out the entire process to the MSG within 30 days from the signing of the contract;
- K. The duration of this assignment is 120 days from the signing of the contract; the consultant is expected to submit a final a report to the MSG within said timeframe.
- L. The consultant must be willing to work under strict rules of confidentiality noting that dissemination of any and all information from this work is only within the purview of LEITI.