

**REQUEST FOR EXPRESSIONS OF INTEREST
(CONSULTING SERVICES – FIRMS SELECTION)**

The Gambia

State Owned Enterprises Restructuring Project

Loan No./Credit No./ Grant No.: **IDA – V2740**

Assignment Title: Transaction Advisor (consortium) for the Restructuring & Privatization of Telecommunications Assets in The Gambia

Reference No. (as per Procurement Plan): GM-PPPPE-114250-CS-QCBS

Republic of the Gambia has received financing from the World Bank toward the cost of the State Owned Enterprises Restructuring Project, and intends to apply part of the proceeds to consulting services for the Transaction Advisor (firm) for the Restructuring & Privatization of Telecommunications Assets in The Gambia.

GoTG now wishes to appoint a consulting team of legal, financial and technical advisers to advise on a transaction strategy and assist in completing the restructuring and divestiture of the retail and wholesale telecom assets including the ECOWAN¹ and NBN² wholesale fibre network, Gamtel and Gamcel. Ministry of Finance and Economic Affairs (MoFEA) now invites eligible consulting firms (“Consultants”) to indicate their interest in providing the Services. Interested Consultants should provide information demonstrating that they have the required qualifications and relevant experience to perform the Services.

The consulting services (“the Services”) include:(1) provide transaction advisory services, including advice on the market structuring, as well as legal, technical and financial aspects of the transactions; and (2) supervise implementation and execute the various components of the transactions as described in these terms of reference

The tasks of the Transaction Adviser will include, but not limited to;

- Due diligence assessment including current state of telecom sector in the Gambia, financial position and capital structure of Gamtel and Gamcel, management and operation of the wholesale fibre network (ECOWAN and NBN);
- Review of existing legal, regulatory and corporate environment for the transactions, including appropriateness to support the new institutional and operating arrangements as well as rules applicable to divestiture/privatization and PPPs;
- an assessment of any contingent liabilities or obligations having a material adverse impact on Gamcel, Gamtel and the wholesale assets;
- valuation of wholesale fibre infrastructure, Gamcel and Gamtel;
- investor interest assessment (market test) and supporting the government in promoting the opportunity;
- establishment of data room;
- review and develop sales strategy and timeline
- assistance with implementation of the sales strategy for Gamtel, Gamcel and the wholesale assets;
- financial and accounting preparation pre-privatization phase (vendor due diligence production; information memorandum production);
- defining pre-qualification criteria;
- prepare bidding and transaction documents for Gamtel, Gamcel and the Wholesale SPV;
- prepare communication strategy and campaign;
- assistance in the bidding process;

¹ ECOWAN = Economic Community of West African Network

² National Broadband Network

- assist the decision-making process and managing the transactions;
- provision of general advice and support throughout the entire process.

The duration of the assignment is twelve (12) months. All the tasks will be specified and detailed in the Terms of Reference and Request for Proposals to be provided to the short listed firms.

- The Consultant is expected to be a firm or JV of firms with minimum of 10 years' experience in the following area of expertise in providing financial, technical, economic, investment banking and legal advisory services, and will be selected based on its experience and capacity in carrying out this type of work. Its knowledge of, and experience in, telecommunications privatizations, particularly in developing countries, will be particularly important. The Consultant's team should consist of personnel with the following skills and experience in telecommunications sector policy, investment banking, strategic and financial planning, law, economics, marketing and regulatory matters relevant to the situation in The Gambia.
- To successfully carry out this advisory service, the consulting firm to be hired should have a proven international experience and proven track record in telecommunication transactions and involvement of private sector.
- The Qualifications and Experience of Key Experts shall not be included in the shortlisting criteria. Key Experts will not be evaluated at the shortlisting stage.
- The attention of interested Consultants is drawn to Section III, paragraphs, 3.14, 3.16, and 3.17 of the World Bank's "Procurement Regulations for IPF Borrowers" July 2016 ("Procurement Regulations"), setting forth the World Bank's policy on conflict of interest.
- Consultants may associate with other firms to enhance their qualifications, but should indicate clearly whether the association is in the form of a joint venture and/or a sub-consultancy. In the case of a joint venture, all the partners in the joint venture shall be jointly and severally liable for the entire contract, if selected.
- A Consultant will be selected in accordance with the Quality-And-Cost Based Selection method set out in the Procurement Regulations.
- Further information can be obtained at the address below during office hours:
- The detailed Terms of Reference (TOR) for the assignment are attached to this request for expressions of interest.
- Expressions of interest must be delivered in a written form to the address below (in person, or by mail, or by fax, or by e-mail) by **October 30th, 2019**.

The Permanent Secretary
 Ministry of Finance and Economic Affairs
 Attn: Mustapha Samateh – Project Director
 The Quadrangle.
 Banjul
 The Gambia
 Tel: +220 4227575 / 4222083
 E-mail: adamariama@gmail.com, msecka40@hotmail.com,

**Terms of Reference for the
Restructuring and Privatization of Telecommunications Assets
In The Gambia**

Transaction Advisors

June 13, 2019

I. Introduction and context

The Government of The Gambia (GoTG) recognizes the importance of the information and communication technology (ICT) sector for the development of the overall economy. The National Development Plan (NDP) 2018-2021 specifically mentions the need to improve the telecommunications access network and to position ICT as an enabler to achieve the national development objectives. The NDP includes targets for the ICT sector to be achieved by 2021:

- Increase the % of population using the internet daily from 46.8% to 90%;
- Increase the proportion of population with access to mobile phones from 78.9% to 90%;
- Increase the proportion of schools connected to broadband internet from 6% to 12%; and
- Existence of National Information and Communications Infrastructure Policy II.

During 2018, with the support of the World Bank, the GoTG undertook a detailed assessment of the ICT sector with a view to identifying options to improve sector performance and reduce the fiscal burden to GoTG. This work included preparation of a baseline assessment, identification and evaluation of options for the reform of Gamtel, Gamcel and other GoTG telecom investments. The baseline assessment included:

- due diligence on technical, operational, organizational, commercial, legal and regulatory matters;
- assessment of network operability, functionality and coverage, workforce, subscribers, service offerings, sales and marketing capabilities;
- assessment of financial performance and condition; and
- assessment of strengths, weaknesses, opportunities and threats.

Various restructuring options were identified, including merged and separation scenarios. For each scenario, the following matters were prepared:

- financial and economic viability and future potential of each business segment;
- financial and economic analysis for various business cases to determine commercial viability and potential fiscal impact;
- investment plan for the new operating model and service offerings to indicate capital expenditure (capex) needs;

- potential ownership models for private participation under each option (such as full privatization, partial divestiture and PPP); and
- recent and relevant African and global experiences for each option.

A number of workshops were also held with GoTG and key stakeholders to discuss the findings and help build a consensus around a preferred course of action. As a result of this process, the GoTG has decided to reduce and reform its role as an owner of ICT sector businesses. The proposed reforms will touch on the following key bundles of assets and businesses:

- Wholesale national fibre infrastructure, comprising ECOWAN, NBN and Gamtel legacy fibre which competes with microwave in the wholesale backhaul transmission facilities and services market;
- Gamcel's core retail mobile voice and data business, which competes against three other private operators in the retail mobile market;
- Gamtel's core retail fixed voice and data business, which competes against seven private operators in the retail fixed market; and
- GSC's wholesale international bandwidth business, which comprises a cooperative of most facilities-based operators in the market.

In-line with global practices, these businesses should be private sector led without involvement by the public sector. The GoTG recognizes that the public sector still has an important role to play in convening private sector investment in core national infrastructure at the wholesale level, particularly through lowering capital costs and investment risk. However, the operation and management of these assets should be led by the private sector to ensure market discipline, promote efficiency and align operations with users. GoTG will restructure its role as an investor in core wholesale infrastructure assets. The options identified for divesting the assets include:

- *Gamcel*: Transfer shares or assets from Gamcel to Gamtel; attempt to privatize Gamcel; or put Gamcel into liquidation if alternative restructuring options or privatization is not feasible;
- *Gamtel*: divest Gamtel shares or assets to another operator; facilitate Gamtel management buy-out; or spin off Gamtel cost centers as separate enterprises.
- *Fiber backbone*: establish a separate entity as a wholesale provider; divest under a private cable model; or divest under a consortium cable model which links capacity and membership.

The aforementioned documents will be made available to the selected Consultant. The Consultant will be expected to validate the prior study and identify any alternative options.

As a first step towards executing these reforms, the GoTG is in the process of recruiting an experienced corporate and commercial legal advisor (Legal Advisor) to establish the Broadband Fiber Co. SPV and complete the transfer of identified backbone fibre assets from Gamtel and the Ministry of Finance to the SPV. These assets comprise 817 km of ECOWAN fibre, 130 km of Gamtel legacy fibre (incorporated into ECOWAN) and 420 km of the National Broadband

Network fibre for which deployment was completed end of 2018. The Legal Advisor is tasked with the following activities:

- Review the legal and regulatory framework in The Gambia to determine options and steps to allow for the transfer of such assets, as well as the legal regime applicable to the new entity.
- Prepare all necessary documentation and ensure that the transfer of the assets to the SPV is structured and executed in a manner which maximizes the potential for a successful PPP transaction within 12 months, minimizing any potential legal, financial or technical risks or potential delays.
- Ensure that the SPV is structured in such a way as to facilitate the next sector reform step(s), particularly the reorganization of the SPV and/or the assets into a PPP to facilitate private sector investment; and
- Establish any interim arrangements (e.g., a short-term lease-back from SPV to Gamtel) needed to ensure that the assets are managed, maintained and operated appropriately until the PPP transaction can be designed and implemented.
-

Building on the work carried out by the Legal Advisor, The Consultant is expected to assist on the design and implementation of the PPP transaction allowing for private sector participation.

In addition, a separate procurement process will be launched, with the support of the World Bank-funded SOE Reform Project (P164664), to address the overstaffing issue at Gamtel and Gamcel and support the Government develop and implement a Social Plan for the employees of the two companies. The Social Plan would include re-training and re-employment programs, as well as a retrenchment plan with a severance formula based on Gambia's National Labour Laws. Support will also be provided under this Project to develop and implement a communications and public consultation strategy to ensure that the proper communications and grievance mechanisms are in place during implementation of the Social Plan.

GoTG now wishes to appoint a consulting team of legal, financial and technical advisers to advise on a transaction strategy and assist in completing the restructuring and divestiture of the retail and wholesale telecom assets as described in these terms of reference. This work will include legal, technical and financial due diligence(s); assessing investor interest; valuing Gamtel and Gamcel, together or separately, whether as a going concern and by way of asset sale; valuing the wholesale assets under various PPP options and scenarios; international marketing; carrying out international competitive tender process(es); and implementation of each transaction, including all legal documents required to complete the transactions. The Consultant will also assist the Government in preparing all briefing documents, Cabinet papers, etc., and consulting with interested stakeholders throughout the process.

II. SCOPE OF WORK

The objective of the consultancy is to: (1) provide transaction advisory services, including advice on the market structuring, as well as legal, technical and financial aspects of the transactions; and (2) supervise implementation and execute the various components of the transactions as described in these terms of reference.

The Consultant is required to work with the Department of Public-Private Partnership (DPPP) at the Ministry of Finance and Economic Affairs (MOFEA) to plan and execute each transaction step; structure the components of the transactions; restructure and sell Gamtel and Gamcel; manage the tender processes; reposition the wholesale assets, whether in the SPV to be established as a going concern or other PPP arrangement; and complete all transaction steps and divestitures through to completion.

The Consultant will be expected to rely on its own due diligence, market testing and analysis, and reports of prior consultants as appropriate, to guide its work. The Consultant will also, as appropriate, consult and work in collaboration with other consultants recruited by the GoTG, such as the consultant retained on Human Resources issues.

The Consultant shall ensure that all advice complies with all applicable laws and shall consider any constraints or opportunities associated with applicable laws. The Consultant will also furnish a Legal Opinion confirming due authorization, execution, delivery and enforceability under each transaction.

1. Due Diligence Report

The Consultant will prepare a due diligence report which shall cover:

- A description of the current state of development of the telecommunications sector in The Gambia, including applicable policies, laws, regulations and processes governing the sector, including the ICT4D II (formerly called the National Information and Communication Infrastructure Policy II) and NDP 2018-2021;
- Assessment of financial position and capital structure of Gamtel and Gamcel, based on internal or external audited or management reports, business plans and projections, including an assessment of debt level, sustainability of debt, contingent liabilities (e.g. wage and salary arrears, pension benefits, as well as any environmental liabilities, etc.) as well as relevant industry and regional benchmarks;
- Assessment of the current status of management and operation of the wholesale fibre network (ECOWAN and NBN), and assessment of Gamcel and Gamtel covering technical, physical, financial, managerial and human resources;
- A review of the existing legal, regulatory and corporate environment for the transactions, including appropriateness to support the new institutional and operating arrangements as well as rules applicable to divestiture/privatization and PPPs, and recommendations on changes needed to ensure compliance and improve the business climate in the interests of users, addressing the following matters:
 - relevant Acts, constitutional, contractual and license issues;
 - any tax issues, land issues, employee, supplier or loan covenants;
 - Any environmental liabilities;

- existing ECOWAN, NBN, Gamcel and Gamtel's contracts, licences, international and domestic agreements, assets, obligations and commitments;
- claims, contingencies or court proceedings and highlight those that may require further legal due diligence;
- presence (if any) of WTO commitments and obligations;
- foreign ownership and foreign investment rules, general and specific to the telecommunications sector, if any;
- an assessment of any contingent liabilities or obligations having a material adverse impact on Gamcel, Gamtel and the wholesale assets;
- any proposed amendments or corrective actions in connection with the transaction; and
- any liabilities to employees likely to be incurred by Gamcel and Gamtel as a consequence of the proposed transactions including terminal benefit costs if any, and pension liabilities.

The due diligence report will also address, among other matters, corporate, legal, regulatory, contractual, tax, financial, environmental, title to assets, including real property, labour and related matters which the Consultant considers relevant to the transactions and the GoTG's preferred option(s) for reform. It will also include any identified legislative or regulation amendments, corrective or ameliorating actions required, all corrective measures and other recommended actions to be concluded prior to the transaction process launch to maximize the feasibility and attractiveness of the transactions(s).

2. Valuation of Wholesale Fibre Infrastructure, Gamcel and Gamtel

The Consultant will prepare a valuation of the wholesale assets, Gamcel and Gamtel, and the combined Gamcel and Gamtel retail businesses, if there is investor interest, and estimate the range of values expected from the sale of the GoTG's shares under the various strategies developed below. The valuation shall take into account all relevant factors including the current and potential market, interests of users and mechanisms for improving access to broadband services, the existing network as well as on-going expansion and rehabilitation. The Consultant will also take into account prevailing conditions such as political stability, liabilities and contingent liabilities, regulatory framework, and the capacity of national financial markets. The Consultant shall also consider options which minimize regulatory burden, investment risk and the need for *ex post* regulation of monopoly or dominant service provider(s). The Consultant will also:

- Finalize or restate parts of any restructured balance sheet for Gamtel, Gamcel relating to the transfer of wholesale assets to the SPV. The Consultant will lead any work related to assets and liabilities transfer, and preparation of land titles;
- Conduct a financial due diligence of the accounts for the most recent financial year, and provide a view and assurances on the quality, accuracy, etc., of these financial statements;
- The financial due diligence shall be geared towards expressing a professional view as to the fairness of the audited accounts, and must guide any prospective investors in

- making informed decisions to invest in the sector (pursuant to whichever option(s) GoTG selects);
- In conducting the financial due diligence, special attention should be given to the following matters:
 - the assessment of the value of Gamtel, Gamcel and the SPV assets insofar as they relate to future profitability or prospects;
 - the assessment of the intangible assets which have an impact on the businesses (e.g., investment in training);
 - the assessment or valuation of accounts receivables and adequacy of provisions for doubtful and bad debts.

Based on the financial and corporate analysis of Gamtel, Gamcel and the SPV, the Consultant will assist the Government in finalizing preparations for the transaction (specifically, implementing the Government's preferred option(s) for sector reform). The valuation of the businesses will take into account all relevant factors, including demand, the existing network, liabilities, staffing levels, analysis of historical financial and operating performance, review of impact of regulatory changes, financial projections, DCF sensitivity analysis (demand forecasts; penetration rates), and other factors agreed between GoTG and the Consultant. Based on the transaction strategy approved by GoTG, the advisor will revise the valuation(s). The Consultant will assess investors' interest based on the approved transaction strategy. The Consultant is expected to recommend immediate measures that could contribute to attracting top-quality investors. The Consultant is also expected to advise on possible mechanisms for local investor participation as requested by GoTG.

3. Assess Investors' Interest (Market Test Report)

The Consultant will assess and prepare a confidential market soundings report addressing both foreign and local investors' interest in the telecommunications sector in The Gambia, where appropriate identifying particular companies that may be interested in investing in the wholesale assets, Gamcel and Gamtel. The Consultant is expected to recommend immediate measures that could contribute in attracting top-quality investors.

Investors' interest will be assessed for the wholesale assets in the following manner, amongst other scenarios the Consultant may propose:

- Extending the existing PPP SPV for ACE - the Gambia Submarine Cable (GSC) Corporation for the Wholesale Fibre Infrastructure; or
- Utilizing and repositioning the newly established Broadband Fiber Co. SPV as a PPP for the Wholesale Fibre Infrastructure.

Investors' interest will be assessed for each of Gamtel and Gamcel, whether by way of share or asset sale, in the following manner, amongst other scenarios the Consultant may propose:

- private sector interest in Gamcel's Retail Mobile Business;

- private sector interest in Gamtel's Retail Fixed-line & Internet Service Business; and
- private interest in both Gamcel and Gamtel retail businesses together (Mobile and Fixed-line & Internet).

The successful strategic bidder(s) is expected, as a minimum, to:

- be a top-class international telecommunications operator with a demonstrable track record delivering high-quality low-cost services to consumers;
- have capability and commitment to manage, operate and develop telecommunications in line with GoTG's priorities;
- possess strong managerial capability and sufficient financial resources commensurate with the proposed investment(s);
- demonstrate a commitment to implementation of a strong development program for Gambian managers and staff.

The market test report shall address the following issues, among other aspects:

- analysis of the various organizational and separation options and their advantages and disadvantages based on the objectives set by the Government and investors' interest;
- assessment of financial feasibility of the possible options including delivering financial projections up to ten years;
- degree of investors' readiness to take on state debt for under each option and advise on adequate financial (capital) structure, taking into consideration that any new company could inherit liabilities including debt; and
- analysis of options for local private sector and employee participation.

4. Review and Develop Sales Strategy and Timeline

Based on market/investor feedback and revised valuations, as relevant, the Consultant will prepare a draft transaction strategy which will identify the key structure(s) for implementing GoTG's preferred option(s). The transaction strategy will highlight the recommended detailed transaction process and outline possible implementation strategies that are consistent, and in accordance, with the GoTG's overall objectives for the sector. The Consultant will also recommend a preferred strategy that shall include advice on a suitable timetable for the sale(s), appropriate investment and roll-out targets, and the appropriate method of approaching and selecting the strategic investor(s). The report shall, *inter alia*, identify likely constraints on the sale and make recommendations for removing them or ameliorating difficulties taking into account the time scale required for implementation.

5. Assistance with Implementation of the Sales Strategy for Gamtel, Gamcel and the wholesale assets

Following a decision by the GoTG on the preferred sales strategy, the Consultant will assist in the implementation of the selected sales strategy for Gamtel, Gamcel and the wholesale assets. As part of this overall assistance, the advisor shall address and make recommendations on dealing with all significant

factors impacting on the successful completion of this transaction. This will include, but not be limited to, advice on the following:

- the implication of the existing legal and regulatory framework, in particular the Information Communications Act 2009, as well as rules governing privatization/divestiture and PPPs;
- institutional environment, overlapping duties and responsibilities of different institutions and departments that may impede the implementation of the strategy;
- the financial position of the retail revenue components, the various titles, valuation of assets, treatment of accounts receivable, the level of debt and any further financial and other restructuring which may be required;
- provide legal assessment of the contractual obligations and liabilities, methods of transferring such obligations to the potential new company(ies);
- the operating license for Gamcel, Gamtel and SPV (as applicable);
- the proposed tariff policy and interconnection regime for the sector;
- tariff re-balancing;
- the most appropriate method and time scale for attracting Gambian investment into the sector;
- a detailed marketing strategy for the transactions;
- the best approach for attracting the best investors;
- the procedure and time schedule of the bidding/sale to be carried out and criteria for the selections;
- the impact and the best way to deal with the existing debts;
- the impact of over-staffing to the transaction and the way to deal with this if existing staff are to be transferred to the private investor(s);
- advise on roll-out plans and investment by any strategic investor(s).

7. Prepare bidding and transaction documents for Gamtel, Gamcel and the Wholesale SPV

The Consultant, in close collaboration with other consultants appointed or to be appointed, in accordance with Gambian legislation, shall prepare or assist in preparing all bidding and other transaction documents necessary to complete the sale of Gamtel, Gamcel and wholesale assets, including but not limited to:

- summary information memorandum, if required;
- information memorandum;
- draft task book;
- task book;
- virtual online data room information;
- invitation to tender documents;
- any documents pertaining to the restructuring of the targeted companies or establishment of new companies for the purpose of the transaction, such as articles of association, share registers,, etc., as well as any documents necessary to allow for the proposed transactions, including transfers of assets and liabilities prior to the transaction;

- draft and final share or asset purchase agreements and shareholders agreements; and
-
-
- Any other closing transaction documents that may be needed.

These documents should include information on, but not be limited to:

- Policies and objectives of GoTG in the ICT sector;
- Existing sector structure;
- GoTG strategy for the businesses/assets;
- Existing legal and regulatory framework;
- Licenses, financial information, human resource situation;
- Bidding process and selection criteria.

2. Communication strategy and campaign

The Consultant shall prepare a communication strategy to be submitted to GoTG for approval. Once adopted, the Consultant will provide support to GoTG officials for the communication campaign (e.g., briefing, preparation of materials and presentations if needed). The Consultant will also assist in the preparation and implementation of key communication actions towards employees, potential investors and other key stakeholders.

3. Investors' conference(s)

The Consultant shall organize one investors' conference ahead of the launch of each bidding process or processes (or after any pre-qualification stage) to strengthen investors' interest and highlight GoTG's commitment to the transactions.

4. Assistance in the bidding process

The Consultant shall assist GoTG in carrying out all activities which are necessary to implement the bidding processes, at all times assuring transparency of the processes and consistency with international best practices:

- Develop the timing of the bidding processes to be carried out for the transactions, including selection and evaluation criteria;
- Design and implement a detailed selection and evaluation processes;
- Manage the due diligence processes (to be carried out by potential investors);
- Making and managing communications to disseminate transaction information;
- Advising GoTG on strategy of answering critical questions raised by potential investors;
- Pre-qualify bidders and defining a shortlist of pre-qualifying bidders;
- Design how offers will be evaluated and assist in evaluating the offers received;

- Assist with negotiating the appropriate commitments from investors (e.g., with respect to further investment, network configuration, etc.);
- Assist with negotiations on the transaction agreements and any related documentation; and
- Facilitate the conclusion of the transactions.

5. Assist the decision-making process and managing the transactions

The advisor will assist in the decision-making processes and the management of the transactions. This could include the following matters:

- Highlighting the key decisions needed to be made by GoTG and the implications of each decision. When one option needs to be chosen among several alternatives, the advantages and disadvantages of each scenario should be clearly presented to GoTG and documented. Linkages between the steps involved in completing the transaction and other aspects of the sector policy implementation will also be identified;
- Organizing the information meeting and negotiation with potential investors and, if necessary, co-ordinating internal meetings with GoTG to facilitate decision making;
- Documenting the draft agreement of each negotiation until the final version and the conclusion of the transactions (each transaction will be concluded when all contractual agreements have been signed and have taken effect and when the proceeds from the transaction have been paid).

6. Transaction services

The Consultant will, in close co-operation with relevant agencies of GoTG, prepare the documentation referred to above under “prepare bidding and transaction documents”. The Consultant’s legal team will also provide general legal advice and assistance to GoTG as needed in connection with the bidding processes, decision making processes and managing the transactions. Legal advice will cover all issues which arise in connection with the transaction, including for example, legal advice during:

- The pre-qualification processes;
- The bidding processes;
- The due diligence processes;
- The negotiation of the transaction documents; and
- Concluding and closing each transaction.

The advisor’s legal team will also:

- Ensure that each transaction is consistent with Gambian law, international obligations if any, and international best practice concerning transactions of the applicable nature;
- Assist GoTG to deal with any legal and regulatory inquiries which may arise during the bidding process and actual receipts of bids;
- Identify legal constraints if any to each transaction and make recommendation for overcoming any issues together with action plans taking into account GoTG's timetable for implementation; and
- Furnish a Legal Opinion confirming the transaction is duly authorized, executed, delivered and is enforceable under the laws of The Gambia.

7. PPP Transaction over the wholesale assets

The Consultant will be guided by the imperative of ensuring that the model for the ownership and control of these wholesale assets best supports GoTG's objectives of more affordable internet for users. Options for maintaining a private cable model may include: (a) restructuring the SPV successor with operators holding shares linked to capacity corresponding to the funding provided; (ii) operators buying capacity through IRUs or long-term lease capacity without corresponding shares in the SPV; or (iii) transferring the assets to the existing PPP vehicle(s) which holds the interests in the ACE system. In each case, the Consultant shall also provide recommendations from a commercial, regulatory, financial and implementation perspective.

Having regard to the possible option(s), the Consultant will identify the assets, and calculate and analyze the various financing needs and structure for private and public sector participants. Such advice should detail the indicative (i) business case for the structure; (ii) financing role of Government and the private sector; (iii) mechanisms for promoting private sector participation including among operators (layaway schemes, deferred payment, etc.) and financial investors (preference shares, bonds, etc.); and (iv) possibilities for *ex ante* or *ex post* divestiture by Government. If public sector financing is included the Consultant shall consider PPP best practices under each alternative option.

The Consultant will also ensure that recommendations adhere to best practices for ensuring open access and promoting the interests of end users. The Consultant will assess and prepare a report on key elements and lessons learned under other relevant structures for cable investments, drawing on existing reports prepared for GoTG. The consultant should specifically consider any "lessons learned" which can be applied by GoTG in order to better promote the interests of end users, having regard to mechanisms (or legal / regulatory enabling environment) which protect existing or future access seekers against discriminatory treatment, either by denying them access altogether or by providing them with access on less favorable terms (e.g., availability, quality and price). This may include preparing and offering to the regulator a Reference Interconnection Offer (RIO) on behalf of the SPV or PPP.

The final deliverables will include but not be limited to:

- Detailed analysis of existing structure of ACE PPP highlighting possible conflicts in relation to operations and business dealings (as applicable);

- Examination of past and present financial performance of SPV assets to assess financial health, in particular the capacity to be self-sustaining into the longer term;
- Review any corporate plans, financial forecasts and budgets and comment on expected performance in both financial terms and capacity to provide services;
- Review in detail of material contractual obligations of SPV (to financiers, customers, other partners including international telecommunications operators etc.);
- Review current and prospective markets for connectivity bandwidth utilizing the wholesale assets;
- Review of and advice on potential areas of growth and value creation for the assets, both in the current form and in a form proposed by the Consultant.
- Analysis of claims, contingencies or legal / regulatory proceedings or outcomes, highlighting matters that may require further legal due diligence;
- Review of relevant Legislation, regulatory instruments, contractual and license issues;
- Review of foreign ownership and investment rules, general and specific to the wholesale assets, if any;
- Consideration of views and commentary of service providers in The Gambia, the Regulator, GoTG and other stakeholders;
- Relevant corporate and operational issues that will impact GoTG's ability to effect restructuring, refinancing or other proposed changes with SPV or other PPP vehicle.

As identified in the sections above, the Consultant will also be expected to prepare (as appropriate) all necessary reports and documents, including but not be limited to:

- a transaction strategy that identifies the transaction steps, due diligence, consents, regulatory approvals, corporate and shareholder actions, and other steps needed to complete the assignment;
- a due diligence report;
- negotiate and document all third-party consents and approvals;
- as applicable, revise or draft new corporate governance documents for SPV, (repositioned SPV, new SPV, transfer to existing ACE PPP, etc.), including certificates of incorporation, registration, articles of incorporation and bylaws, shareholder certificates, appointment of initial directors, corporate officers;
- draft any IRUs (or other instruments) which may be required as part of a repositioning of SPV or as capacity-linked instruments as part of a new SPV/PPP, etc.
- revise or draft new operating procedures including governance manual, financial management controls, asset register, opening balance sheet, etc, for adoption.
- Prepare all shareholder and director resolutions for any transactions;
- obtain regulatory approvals, licenses, etc., authorizing any transactions including changes in ownership or operation of the assets, including any RIO(s) which may be warranted;
- establish arrangements for the sound management, operation and maintenance of the assets by SPV, new SPV/PPP or ACE PPP;

-
- Complete all other matters required to facilitate the conclusion of these transactions; and
- furnish a legal opinion confirming the transaction is duly authorized, executed, delivered and is enforceable under the laws of The Gambia.

III. Administrative Arrangements

The DPPE will manage the sales process, with important inputs from a Technical taskforce comprising of focal points from MOFEA, Ministry of Information and Communication Infrastructure (MOICI), the Public Utility Regulatory Authority (PURA) and Gamtel/Gamcel Management. The Technical Taskforce will in turn report to and seek guidance from a Steering Committee comprising the Minister of MOFEA, MOICI, Ministry of Justice, and the Office of the President. A process of continuous consultation is thus required, to which the Consultant will be expected to contribute. The Consultant's work program should be flexible so as to accommodate the emergence of new issues or a new timetable. The volume of inputs required would clearly vary from time to time and the presence of the Consultant may not always be necessary. However, the DPPP would seek swift access as issues arise. The Consultant will report to the DPPP and Technical Taskforce.

The DPPP will provide the Consultant with all documents and reports available to facilitate the implementation of the mission by the Consultant, including reports and documentation prepared by other consultants. The Consultant is also expected to work together and coordinate with other consultants that the GoTG may hire to assist in the implementation of the transaction considered herewith, such as the consultant in charge of the Social Plan.

The DPPP will facilitate coordination with the other consultants and relevant Government departments.

The entire assignment should be completed within twelve (12) months from the date of signing the agreement between MOFEA and the Consultant. At the time of submitting the recommended strategy to the GoTG, the Consultant will submit a detailed work plan for the remainder of the assignment. The Consultant will submit monthly reports on the progress of the assignment, and a full report on the completion of each task, which will include updates of the work plan to completion. The Consultant is expected to be available until the transaction is closed. The transaction will be considered closed when MOFEA has received the full proceeds from the transaction(s).

The Consultant is expected to be a firm or JV of firms with expertise in providing financial, technical, economic, investment banking and legal advisory services, and will be selected based on its experience and capacity in carrying out this type of work. Its knowledge of, and experience in, telecommunications privatizations, particularly in developing countries, will be particularly important. The Consultant's team should consist of personnel with the following skills and experience in telecommunications sector policy, investment banking, strategic and financial

planning, law, economics, marketing and regulatory matters relevant to the situation in The Gambia. .

- *Financial and Marketing Advisor(s)*: Experience and knowledge of the privatization process within the ICT sector, the sale or lease of infrastructure assets and the impact of reform decisions on the ability to attract private finance. Experience in financial analysis and modeling, with relevant finance experience through to close of transactions. Experience in IFI procurement and structuring requirements, particularly for privatizations in transitional economies. Minimum qualifications: Master's degree in Finance or a related policy field, and a minimum of 7 years' experience as an advisor on privatizations and infrastructure SPVs in the ICT sector.
- *Telecommunications Lawyer & Privatization Legal Expert(s)*: Experience in corporate law and company restructuring (including labor aspects), structuring privatizations and infrastructure SPVs in the ICT sector, drafting tender documents, and negotiating financial close. Demonstrated knowledge of best international practice in the drafting of licenses, privatization agreements, contracts and legislation. Relevant experience in the drafting and negotiating of such arrangements and communicating with bidders. Experience in IFI procurement and structuring requirements, particularly for privatizations in transitional economies. Minimum qualifications: Law degree from a recognized university and admitted to practice in a recognized jurisdiction with a minimum of 10 years' experience as a transaction advisor on telecommunications projects and executing national-level privatizations and infrastructure SPVs.
- *ICT Technical Expert*: Experience in the operation of both mobile and fixed networks and knowledge of the engineering, operational and other technical aspects of the infrastructure sector. Ability to advise on the condition of existing assets, rehabilitation needs and new investment requirements. Technical due diligence and advice on privatization structuring and contracts. Minimum qualifications: Master's degree in ICT engineering, or other relevant field of engineering, and a minimum of 10 years' in consulting or operations of broadband networks, including specific experience with operation, management, rehabilitation and upgrades of mobile and fixed networks.
- *ICT Markets Expert*: Experience analyzing demand, revenue and profit potential for mobile and fixed telecommunications submarkets, particularly for 4G/LTE services. Knowledge of the market entry objectives and strategies of telecommunications operators. Experience structuring and implementing privatizations in transitional economies. Master's degree in economics and experience advising on telecommunications and assessing strategic options for reform and restructuring ICT markets.

The Consultant is required to partner with a domestic investment bank, legal firms and/or other financial advisory firms.

The Consultant should note that the DPPP will provide some office space or other facilities or services in connection with this assignment.