



Republic of Ghana

Ministry of Communications and Digitalisation

**eTransform Project
IDA CR5304-GH**

Terms of Reference

for

**DEVELOPMENT OF REGULATIONS FOR THE NATIONAL INFORMATION
TECHNOLOGY AGENCY (NITA)**

(ID: eTP/RComp/1.6.3) - GH-MOC-230670-CS-CQS

May 2021

**TERMS OF REFERENCE
FOR DEVELOPMENT OF REGULATIONS FOR THE NATIONAL
INFORMATION TECHNOLOGY AGENCY (NITA)**

1 BACKGROUND

The Government of Ghana recognizes that in the new emerging economic order, information and knowledge have become the fundamental basis for wealth creation and national prosperity.

The Ministry of Communications and Digitalization is in the process of formulating a Digital Economy Policy, Strategy and Action Plan for the Republic of Ghana. This would replace the Ghana Information Technology Policy for Accelerated Development [ICT4AD Policy] of 2003.

Among the numerous legislations passed by the Government is the National Information Technology Agency Act (771). This Act established the National Information Technology Agency (NITA) to regulate information communications technology and to act as the national implementation and co-ordination Agency for the ICT policy. The Act sets out the objects, functions, powers and regulatory practices of the Agency. It among other things also sets out the composition of the Agency, its governing body as well as their powers and functions. Its mandate includes identifying, promoting and developing innovative technologies, standards, guidelines and practices among government agencies and local governments, as well as ensuring the sustainable growth of ICT via research & development planning and technology acquisition strategies to facilitate Ghana's prospect of becoming a technology-driven, knowledge-and values-based economy.

Under the NITA Act (Act 771), NITA is responsible for implementation and monitoring of the national information communication technology policy. The Digital Economy Policy, with its corresponding Strategy and Action Plan, will therefore be a guidepost for action plans that will be developed for implementation and monitoring by NITA.

A comprehensive subsidiary legislation is required for the full implementation of both the NITA Act and the Electronic Transactions Act (ETA) to enable NITA function properly, develop required strategies and ensure compliance and adherence to these goals, strategies and action plans through an effective legal framework.

After almost 10 years of implementing the law, the challenges arising from the absence of this legislation is apparent and there is the compelling need to introduce regulations to guide the smooth implementation of the law, in view of the increasing reliance on electronic and digital platforms and services.

2 OBJECTIVE

The objective of this assignment is to review the legal and regulatory environment and develop appropriate draft regulations. The compelling need for subsidiary legislation is consistent with

1. NITA'S responsibilities under the National Information Technology Agency Act, 2008 (Act 771)
2. Electronic Transactions Act 2008 (Act 772)
3. Recent and current developments in the ICT space of government and the country, including the Digital Economy Policy Development and the Review of the Gap Analysis of the Legal/regulatory Framework for Ghana.

The Ministry of Communications and Digitalisation had earlier engaged a consultant to prepare regulations with only Sections of the National Information Technology Agency Act, 2008 (Act 771) in mind but now intends to engage the services of a Consulting firm/Consortium to assist in drafting comprehensive regulations for the National Information Technology Agency ACT 771 and the Electronic Transactions Act 2008 (Act 772).

3 SCOPE OF ASSIGNMENT

The Consultant shall:

Review the Act establishing NITA and other relevant laws and prepare draft subsidiary legislation necessary to give effect to the National Information Technology Agency Act, 2008 (Act 771) and the Electronic Transactions Act 2008 (Act 772) and the Digital Economy Policy of Ghana.

The Consultants shall also take into consideration the current work being done by the Consultants engaged by the Ministry of Communications and Digitalisation under the Gap Analysis of the Legislative Framework Consultancy'

The regulations should:

- i. Address the role of NITA in implementing ICT Policies for both the Private and Public Sectors.
- ii. Clearly identify and elaborate the regulatory functions of NITA, including the scope and limits of interventions.
- iii. Identify and outline NITA's role in the implementation of eGovernment activities and ICT Policy across MDAs and MMDAs to ensure harmony of implementation across government in a manner consistent with the provisions of the 1992 Constitution.
- iv. Ensure compliance in data protection, cyber security, critical infrastructure protection and monitoring and robust digital forensic capabilities within the Civil and Public Service network and infrastructure.

The Regulations must provide a legal framework which enables NITA to play the role required for the development of digital hubs and Value Added Service sectors in the ICT sector.

It should also address all aspects of eGovernment, Public and Civil Service institutions under the 1992 Constitution as affected by the ETA, NITA Act and Information Technology Policy for which NITA has the statutory responsibility for monitoring and implementing. This will involve issues relating to:

- i. regulating the provision of information communications technology,
- ii. ensuring the provision of quality information communications technology,
- iii. promoting standards of efficiency
- iv. ensuring high quality of service.
- v. IT Audit of MDAs
- vi. IT Project clearance for the projects and activities undertaken by MDAs
- vii. Data Center Activities
- viii. Government institution websites
- ix. Government web portal
- x. Electronic government systems
- xi. Type Approval for IT equipment
- xii. Information security, e.g., digital forensic, data breaches by external actors (espionage) and network security
- xiii. Public Key Infrastructure (PKI) effective legal framework and ecosystem
- xiv. Open Data effective legal framework.

As part of this process, the Consulting Firm would be required to:

- a. Facilitate and participate in stakeholder workshops organised by the Ministry of Communications and Digitalisation in respect of the NITA Regulations to be drafted under this Consultancy
- b. Liaise with relevant institutions (including MoCD, Parliament and Attorney General's Department) to facilitate Parliamentary Approval of the Draft Regulations.
- c. Facilitate and participate in Parliamentary Sub Committee review meetings.
- d. Prepare a Change Management Policy approach relevant to the subsidiary legislation to ensure that the provisions of the subsidiary legislation are implemented successfully, monitored constantly and the enforcement of the provisions of the subsidiary and primary legislation are sustained and remain effective

Key Outputs of the Consultancy include the following:

- a) Development of NITA Regulations;

- b) Full Classification by Parts and Sections relating to regulatory roles and responsibilities of NITA, with clear separation between regulatory and operational functions
- c) Change Management Advisory approach unique to the subsidiary legislation.

4 REPORTING AND TIME SCHEDULES AND PAYMENT SCHEDULE

The Consultant shall report to the Director General, NITA and keep the Chief Director of MoCD and the eTransform Project Coordinator informed about all aspects (activity implementation status, outputs, challenges and general issues) of the consultancy.

Assignment Duration and Schedule of Deliverables

The duration of the assignment will be Twelve weeks (12) weeks

The following deliverables are required:

	Deliverable	Timing	Payment (%)
1	Inception Report	Commencement + 1 week	10%
1	Submission and Acceptance of Draft Regulations, including clear separation between regulatory and operational functions and systems for regulatory monitoring	Commencement + 8 weeks	20%
2	Submission and Acceptance of Stakeholder Workshop report	Commencement + 9 weeks	20%
3	Submission and Acceptance of Facilitation report on Parliamentary Sub Committee review	Commencement + 10 weeks	30%
4	Submission and Acceptance of Final Regulations	Commencement + 12 weeks	20%
		Total	100%

(NB: Payment schedule will be finalized during contract negotiations)

All reports should be submitted in 3 hard bound copies and soft copies on USB Memory Stick to the Director General NITA.

All reports presented will be reviewed and comments will be provided by MOC/NITA within one week from date of receipt. As part of the review process, the Consultant will be expected to make a presentation of the report at a stakeholders’ workshop to be organized by NITA.

All documentation pertaining to each of the deliverables will be shared with the World Bank.

5 QUALIFICATIONS AND EXPERIENCE OF CONSULTANT

The Consultant is expected to be a firm or Consortium which should meet the following minimum requirements:

- a) The selected organization or Consortium should be legally registered and in operations for a minimum of five years.
- b) The Consultant or Consulting entity shall have in their team, a legal practitioner with demonstrable experience in applying technology related matters arising from policy to legislative framework drafting.
- c) Provide References to similar work conducted in the past
- d) Provide a range of allied consultants it may work together with in the conduct of the assignment and relevant to the assignment
- e) Have contemporary understanding of the legal framework of Ghana as they relate to technology and emerging trends in ICT Policy development and reviews
- f) Have a full understanding of the NITA challenges and the relationship which must complement both the NCA and GIFEC for effective ICT policy national development.
- g) Have a full understanding of the role of Regulations in creating an ecosystem which enhances change management and Regulatory cooperation

5.1. Staffing

The assignment will be executed by a multi – disciplinary team of key experts comprising of the following:

1. ICT Legal Expert with legal drafting experience (Team Leader)
 2. ICT Legal Specialist
 3. ICT Specialist
- a) The Team Leader must meet the following minimum requirements:
- a) An advanced University Degree.
 - b) A professional qualification in law with not less than 10-year experience.
 - c) Adequate knowledge of the Ghanaian Legal System.
 - d) Detailed knowledge on the Legal and Regulatory Issues affecting the ICT Industry in Ghana.
- b) The ICT Legal Specialist must have the following minimum requirements:
- a) Must have a Professional Certificate in Law
 - b) Not less than 5 years’ working experience after Professional Certificate in Law.
 - c) Must have good understanding of the role of NITA under the ETA and NITA Act
 - d) Adequate knowledge of the legal and regulatory issues affecting the ICT Industry in Ghana

- c) ICT Specialist must have the following minimum qualifications:
 - a) Advanced Qualification in IT, Economics or relevant subject matter area
 - b) Demonstrate a good understanding of ICT Policy and the role of NITA in Policy effectiveness and realisation.
 - c) Not less than 5 years' experience in Policy Analysis and capable of bringing this to bear in provision of Drafting of the Regulations
 - d) Conversant with modern trends in digital technology.

6 FACILITIES, DATA AND INFORMATION TO BE PROVIDED BY CLIENT

For the execution of the assignment, NITA will provide necessary documentation in its possession relevant to the execution of the assignment.