



**ASEAN-AUSTRALIA DEVELOPMENT COOPERATION PROGRAM (AADCP)
PHASE II**

**TERMS OF REFERENCE
FOR
*Study on the ASEAN Digital Economy Framework Agreement (DEFA)***

The ASEAN Secretariat and the Australian Government, through AADCP II, invite applications from consultants for the above-referenced project.

I. Background

Digital transformation is a foundational strategy for economic growth and prosperity. As one of the fastest-growing Internet markets in the world, there is enormous economic potential that ASEAN can reap from the digital economy. This has been further boosted by the COVID-19 pandemic, which has accelerated global adoption of digital technologies, sustaining operations for businesses and delivering continued value to consumers. At the same time, it has also fostered greater efficiency, innovation and growth. Digital economy is expected to increase intra-regional trade and boost ASEAN's GMV by \$1 trillion by 2030, benefiting the MSMEs that make up more than 97% of the region's enterprises.

While ASEAN has moved into the digital economy, the digital development and growth of most ASEAN countries need to be further accelerated to reap the full benefits of the potential USD 1 trillion of GMV by 2030. A recent study done at the ASEAN Digital Integration Index (ADII) shows that there is much improvement required on the digital trade & logistics, innovation & entrepreneurship and digital talent. Another study by the Harvard Business Review 2020, it is indicated that the digital development and growth in most ASEAN countries are still at the nascent stage due to its limitations in the digital infrastructure, digital regulations and the inequities to access digital tools across gender, class, ethnicity and geographic boundaries.

In order to further accelerate the pace of digital transformation for economic growth, the ASEAN Leaders issued the ASEAN Leaders' Statement on Advancing Digital Transformation, which called for a strategic, holistic and coordinated approach for inclusive and accelerated digital transformation. In October 2021, the Bandar Seri Begawan Roadmap (BSBR): An ASEAN Digital Transformation Agenda to Accelerate ASEAN's Economic Recovery and Digital Economy Integration was officially endorsed by the 20th AEC Council. The key objectives of BSBR includes:

1. Articulate a strong commitment to transform the ASEAN region into a leading digital economy;
2. Work on a single coherent document, with key areas of action, flagship initiatives, specific targets, timelines, and accountability. The single coherent document put to an end the silo approach in ASEAN digital cooperation and secured a more coordinated approach across sectoral bodies; and
3. Setting the foundation for regional digital integration and paving the way for negotiations for an DEFA by 2025.

The DEFA is expected to set a resilient foundation for ASEAN to be a leading digital economy, where the seamless and secure flow of goods, services and data is underpinned by enabling rules, regulations, infrastructure and talent. It will serve as an overarching document that integrate other digital action plans that ASEAN has into a single comprehensive strategy. DEFA will provide ASEAN a clear direction in order to achieve its ambition to have a leading role in the digital economy, through well-coordinated measures across relevant areas that is formalized into a legally binding agreement that considers the level of development and readiness of each Member State. By setting up a formal agreement, ASEAN will have a better opportunity to set forth region-wide policy in digital economy, as an important capital in competing with other region to maximize its benefit from digital economy.

While ASEAN understands the importance of having the DEFA in reaping the benefit in this digital economy era, ASEAN Member States (AMS) also recognize the challenges in realizing it. ASEAN understands the underlying gaps among its members would need some careful consideration during the development of DEFA, to ensure that all AMS are able to maximize the benefit of the digital economy, and not left behind instead. In addition, the digital economy itself is a wide area comprising of many different elements that are administered by different sectors, thus, it is crucial to clearly identify and define those elements of digital economy so that ASEAN can safely navigate its way during DEFA negotiation. This is where the study become relevant for ASEAN before it embarks to negotiate the DEFA, since the study will provide a clear and empiric portrays of the digital economy landscape in the region and individual Member States. The study is expected to be a reference of AMS in negotiating the DEFA in the future.

This project will conduct a comprehensive study on ASEAN's readiness and potential in the area of digital economy, thus providing the empirical information required by ASEAN in negotiating the DEFA. Areas that are essential to the digital economy will be examined, including (but not limited to): digital infrastructure, banking/payment system, digital trade, digital data governance, MSMEs' preparedness for digitalization, intellectual property in the digital space and cybersecurity. Relevant sectoral bodies supervising those areas shall be closely consulted throughout the delivery of this study. In addition, businesses will also be consulted in order to enrich the study.

The scope of work of the study will include:

1. A clear understanding on the different terminologies and their differences or similarities in scope, including but not limited to e-commerce, digital trade, digital interoperable standards, data governance, digital payment and other aspects of digital infrastructure;
2. Undertake a landscape scan of the growth and the opportunities in the global and regional digital economy and the potential economic growth for ASEAN by engaging into the DEFA. This may also include examination of the barriers to adoption of digital technologies that may hinder the full benefit of DEFA;
3. Conduct a stock-take and gap analysis of ASEAN's existing digital integration efforts, including the Digital Integration Framework Action Plan (DIFAP) 2019-2025 and other frameworks such as the ASEAN Comprehensive Recovery Framework, Consolidated Strategy on the Fourth Industrial Revolution (4IR) and the ASEAN Digital Masterplan 2025;
4. Conduct a (i) landscape scan of existing multilateral and bilateral agreements with digital rules globally, including (but not limited to) the Joint Statement Initiative (JSI) on E-Commerce, regional FTAs/Digital Economy Agreements (DEAs) such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), US-Mexico-Canada Agreement (USMCA), Digital Economy Partnership Agreement (DEPA), Singapore-Australia DEA, United Kingdom-Singapore DEA; and (ii) comparative analysis of the structure and substance of these agreements with ASEAN's existing agreements such as the ASEAN Agreement on Electronic Commerce (ECA), the Regional Comprehensive Economic Partnership (RCEP) Agreement and ongoing negotiations on the E-Commerce Chapter in the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and ASEAN-Canada Free Trade Agreement. The proposed landscape scan may highlight the key features, international best practices and level of commitments under said agreements, as well as the experiences and benefits gained by economies that have entered into DEAs;
5. Conduct a mapping of major laws and policy plans of AMS related to e-commerce, digital trade, and the digital economy and assess the readiness of each AMS in implementing UNCITRAL law and the adoption of electronic documents, leveraging existing studies of ASEAN in the area of e-commerce, trade facilitation, and digital areas which had been conducted by relevant sectoral bodies of ASEAN.
6. Identify areas where use case collaboration and/or flexible digital modules can be pursued among AMS as part of the DEFA;
7. Identify the detailed issues that need to be addressed, including but not limited to the readiness of the AMS on digital economy agreement and the laws/regulatory constraints;
8. Inventory of physical and digital infrastructure, and the green technologies that should be incorporated to support the region's environmental goals;
9. Assess the level of public trust in digital/smart systems in each AMS; and

10. Provide recommendations on: (i) the architecture of the DEFA and the scoping areas/elements/modules that could be included in the Framework Agreement for negotiations, the level of readiness of AMS to pursue deeper levels of commitments for each area/element/module. A draft Framework which assists ASEAN in conceptualizing the future DEFA, including its objectives, structure and key components and elements, will be developed for the consideration of ASEAN; (ii) potential measures, milestones and the roles and responsibilities of relevant ASEAN sectoral bodies towards the commencement of negotiations of the DEFA; (iii) policy recommendations to address issues to commence on DEFA with the involvement of ASEAN sectoral bodies ; and iv) recommendations on measures to address digital divide issue, including upskilling and reskilling the workforce, and businesses, especially MSMEs, improvement of digital infrastructure capability, and other capacity building activities that AMS may consider to incorporate in the DEFA .

II. Needs and Objectives

The goal of the Project is the signing of DEFA by all AMS to prepare ASEAN to be a leading digital economy. To achieve that goal, this Project will serve as an additional reference for relevant Sectoral Bodies across the AEC in making informed decisions during the negotiation of DEFA, as well as reference on other future works in the area of digital economy.

III. Outputs

The output for this project is the comprehensive DEFA study to provide ASEAN with additional empiric information in making considerations during DEFA negotiations. A four (4) phased approach with its respective deliverables is recommended:

Phase 1: Inception Report

This report will set the agreed scope of work, timeline, methodology and deliverables that needs to be agreed between the ACCED and the consultant. It should also provide brief review of literature and related sources on digital economy agreements.

Phase 2: Mapping Study and Gap Analysis Report on the Establishment of ASEAN DEFA

This report will detail the current state of ASEAN, which includes the gap analysis of the:

- Current landscape of digital economy among the AMS;
- ASEAN's existing digital integration efforts and their readiness;
- Comparative analysis of the structure and substance of existing multilateral and bilateral agreements with ASEAN's existing agreements
- Mapping of the current DEA that have been undertaken by the AMS with other countries.
- Mapping of major laws and policy plans of AMS related to e-commerce, digital trade, and the digital economy and assess the readiness of each AMS in implementing UNCITRAL law and the adoption of electronic documents.\

The gap analysis and mapping study is expected to identify the detailed issues on the AMS readiness for digital economy agreement and regulatory constraints that need to be addressed to effectively proceed for DEFA negotiations. Specific attention will be given to the CLMV countries during this phase by conducting face-to-face consultation, so that the Study will be able gain deeper insight on lagging conditions in these Member States, and eventually build inclusive recommendations that can benefit all AMS. On-line consultations with each AMS will also be conducted to validate the country findings.

Note: The source of the data for the gap analysis is expected from primary and secondary research by conducting surveys, multiple interviews, dialogues and workshops. The consultant is expected to propose detailed approach to deliver the gap analysis, mapping and issues identification.

Phase 3: Policy Recommendations and proposed Framework on the Establishment of ASEAN DEFA

Based on the current state analysis, a Framework, covering a scoping study on the establishment of ASEAN

DEFA will examine on the areas areas/elements/modules that can be included in the Framework Agreement to accelerate ASEAN's digital integration towards a regionally integrated economy. The framework should include a proposed objectives, principles, institutional mechanism for coordination and negotiations, and structure, the areas/elements/modules based on mutual interests of ASEAN with recommended measures and milestone towards the AMS regulatory readiness and the commencement of negotiations for ASEAN DEFA.

The framework including a scoping study will also include the policy recommendations to guide AMS on the areas/elements/modules that need attention to address the identified issues and maximize the benefit of DEFA in a national and regional context. The study will apply gender lens by ensuring that both men and women benefit from DEFA and promote social and digital inclusion. Detailed activities with timeline, the roles and responsibilities of ASEAN sectoral bodies and the capacity building required by the AMS and ASEAN sectoral bodies to be also recommended for ASEAN to embark into the DEFA negotiations.

Note: The scoping study and policy recommendations is expected to be completed via multiple dialogues and workshops. The consultant is expected to propose detailed approach to deliver the scoping study and policy recommendations report

Phase 4: Final Report on DEFA Study

Final report will incorporate all agreed deliverables at phase 1 – 3 for final endorsement of the DEFA Study by ACCED and SEOM and to be submitted at the 2023 AEM Retreat for consideration

Note: The consultant is also expected to propose revision to the phases and deliverable based on their experience but subject to the approval of ACCED.

IV. Tasks/Activities

The following activities will need to be undertaken to achieve the outputs presented above. The bidder should provide details on its approach to each activity in its bid and is free to recommend additional activities.

Deliverables	Activities/Tasks	Person Working Days	Duration in Calendar Weeks	Completion Date	Person(s) Responsible
Inception report	Development of the scope of work, overall approach to the work, detailed work plan, staffing arrangement, and agreed deliverables; and brief review of literature and related sources on digital economy agreements	40	2 weeks	2 weeks after signing of the Special Services Agreement (SSA)	Consultant
	Circulate the draft inception report to ACCED and ASEC for inputs	20	1 week	Week 3	Consultant
	Prepare and finalise Inception report	10	1 week	Week 4	Consultant, ACCED, ASEC Consultant
<i>Approval of Project Inception Report by the ASEAN Secretariat (2 weeks)</i>					
Mapping Study and Gap Analysis Report on the Establishment of ASEAN DEFA	Current landscape of digital economy, gap analysis of ASEAN's existing digital integration efforts, comparative analysis of the structure and substance of existing multilateral and bilateral agreement, the mapping on the current Digital Economy Agreement (DEA) that have been undertaken by the ASEAN Member States (AMS) with other countries and the mapping of major laws and policy plans of AMS related to e-commerce, digital trade, and the digital economy and assess the readiness of each AMS in implementing UNCITRAL law and the adoption of electronic documents.; The study should include identification of the detailed issues that need to be addressed including but not limited to the readiness of the AMS and regulatory issues	120	9 weeks (partially overlap with activities above)	Week 12	Consultant
	Individual consultation (physical) with AMS to obtain accurate country-level data in the area of digital economy	30	4 weeks (partially overlap with activity above)	Week 14	Consultant ASEC

Deliverables	Activities/Tasks	Person Working Days	Duration in Calendar Weeks	Completion Date	Person(s) Responsible
Mapping Study and Gap Analysis Report on the Establishment of ASEAN DEFA (cont'd)	Consultative workshop (physical) inviting 1 representative from each of AMS from relevant sectoral bodies to harvest direct inputs on the draft Mapping Study before finalized	30	2 weeks	Week 16	Consultant ASEC
	Consultative session in ACCED meeting	20	1 week	Week 17	Consultant ACCED ASEC
	Finalization and acceptance of the Mapping Study and Gap Analysis Report, by ACCED	20	2 weeks	Week 19	Consultant ACCED ASEC
<i>Approval of Mapping Study and Gap Analysis Report on the Establishment of ASEAN DEFA by the ASEAN Secretariat (2 weeks)</i>					
Interim Report - Scoping Study and Policy Recommendations Report on the Establishment of ASEAN DEFA	Preparation and finalization of Interim Report. The report should include: (a) recommendations on the scoping study on the establishment of ASEAN DEFA; (b) policy recommendations to address the identified issues and maximize the benefit of DEFA in regional context; (c) measures, milestones and the roles and responsibilities of ASEAN sectoral bodies towards the AMS regulatory readiness and the commencement of negotiations of the DEFA; and (d) capacity building recommendations for AMS and ASEAN sectoral bodies to implement the policy recommendations and DEFA negotiations	160	10 weeks (partially overlap with activities above)	Week 27	Consultant
	Consultative workshop (physical) inviting 1 representative from each of AMS from relevant sectoral bodies to directly discuss and refine the draft Interim report	15	3 weeks (partially overlap with activity above)	Week 29	Consultant ACCED ASEC
	Finalization of Draft Interim Report	24 0	2 weeks	Week 31	Consultant ACCED ASEC
Approval of Interim Report by ASEAN Secretariat (3 working weeks)					

Deliverables	Activities/Tasks	Person Working Days	Duration in Calendar Weeks	Completion Date	Person(s) Responsible
Final Report on DEFA Study	Finalisation of the combined report based on feedback from AMS on the draft final report	80	6 weeks (partially overlap with activity above)	Week 35	Consultant ASEC
	Socialization workshop (physical) inviting 1 representative from each of AMS from relevant sectoral bodies to directly discuss and refine the draft Final report\	15	2 weeks	Week 37	Consultant ACCED ASEC
	Finalization of the final report on DEFA Study	20	2 weeks (partially overlap with activity above)	Week 38	Consultant ASEC ACCED
	Consultative session to inform SEOM on the Study result	10	2 weeks (partially overlap with activities above)	Week 39	Consultant ASEC
<i>Approval of Final Report by the ASEAN Secretariat (3 working weeks)</i>					
Project completion report	Preparation and finalization of Project Completion Report	20	2 weeks	Week 41	Consultant ASEC
<i>Approval of Project Completion Report by the ASEAN Secretariat (2 working weeks)</i>					
<p>** The number of person working weeks is intended to indicate the amount of relative effort required to deliver the corresponding outputs. The calculation is based on assumption of 5 person days per week. Actual time will be agreed in negotiation with the successful bidder.</p>					

V. Reporting

The consultant is expected to produce reports, namely Inception Report, Mapping Study and Gap Analysis Report on the Establishment of ASEAN DEFA, Interim Report, Final Report on DEFA Study, and Project Completion Report in accordance with Section III and IV above. The timing of delivery is indicative and can be adjusted when the consultant's work plan is developed, subject to mutual agreement.

All reports will be submitted based on AADCP II Guidelines for Contractors in draft format to the Digital Economy Division (DED) of ASEC (with a copy to AADCP II) and, following ASEC approval, in final form. All outputs and reports must be suitable for publication, although the decision on publication lies with the ASEAN.

The contractor will also provide regular (bi-weekly/monthly or as agreed with the ASEC) summation of activities undertaken and issues that have arisen. These will be submitted to DED and AADCP II via email.

Financial reports will be submitted at invoicing in line with a payment schedule to be specified in the Special Services Agreement (SSA).

VI. Project Management

The project will be funded by AADCP II and managed by DED, ASEC. The consultant should be responsible for organising and conducting the scheduled activities in collaboration with the host countries and ASEC.

The project will be funded through AADCP II until the end of 2022. Beyond 2022, support for this project will be provided through AADCP II's successor program, the Australia for ASEAN Futures (Economic & Connectivity) program, upon approval

VII. Scope of Services

The consultancy will be undertaken over a **continuous effective period of 11 calendar months** with approximately **850 working days or 172 working weeks** of professional services. Work will commence immediately after contract signing.

VIII. Qualifications

In its proposal the bidder should demonstrate:

- In-depth knowledge and expertise on digital economy and digital economy agreement (DEA), and relevant issues such as, but not limited to digital trade, e-commerce, digital technology & standards, MSMEs digitalisation, digital payments, data governance/protection, and online consumer protection, preferably with experience in developing inclusive digital economy policy strategy at national and/or international levels;
- Experience in developing high-level framework and work plan as well as detailed operational documents;
- Proven ability in developing high-level policy documents and recommendations
- Proven track record in data collection, management, and analysis as well as report writing on regional and global research/survey;
- Proven experience in facilitating high-level strategic planning discussions/workshops amongst various stakeholders with varying levels of involvement representing different political interests;
- Sound knowledge of ASEAN, its structure, and processes;
- Sound understanding of gender equality and social inclusion, demonstrated experience in identifying opportunities in promoting and mainstreaming gender equality and social inclusion in digital economy studies/projects/programmes/regulatory framework;
- Demonstrated ability to facilitate dialogue and establish relationship with a variety of stakeholders, particularly ASEAN mid to senior government officials;

- Proven skills in report writing and conversing in English; and
- A thorough understanding of ASEAN and AADCP II procedures will be considered added value.

IX. Bidding

Interested consulting firms are invited to submit a proposal in response to these Terms of Reference. This proposal should be in two parts: **Technical** and **Financial components**. These two components must be submitted in two separate files/documents.

The Technical component should present the following information:

- A brief discussion indicating the bidder's understanding of the needs of the project;
- A brief analysis of key issues;
- A methodological discussion of how the bidder proposes to address those needs including assessment of key issues, analytical strategies that will underlie the project, specific techniques to be utilised, and practical discussion of possible limitations in carrying out the project;
- A detailed work plan that specifies activities to be undertaken, expected outputs and deliverables, resources to be utilised and timing;
- Staffing and management plan;
- A discussion on how measures to ensure the future sustainability of the outcomes of the project will be addressed;
- CVs of all proposed experts;
- Brief discussion of firm's past experience in undertaking similar work and brief summaries of all projects undertaken.

The Financial component should specify:

- 1) Professional fees of expert(s);
- 2) Management and/or operational fees (if any), which include all costs incurred by the person/entity/company for internal coordination, communication, travels and any other associated project management cost;
- 3) Applicable taxes such as VAT, GST, PPN. See Section XI point 3 for an additional note on tax liability.

Activity costs for experts and participants such as reimbursable expenses for airfare, other travel costs and daily subsistence allowance for workshops, meetings, and all other agreed activities do not need to be included in the Financial Component. These items will be discussed with the preferred contractor during the finalisation of the scope of services. Costs will be based on prevailing ASEC rates.

X. Submission of Application

Applicants should send their application with a cover letter, materials specified in Section IX above and other supporting documents with "**Study on the ASEAN Digital Economy Framework Agreement (DEFA)**" as the subject via email to tender@aadcp2.org, no later than **2 November 2022 at 05:00pm Jakarta time**.

For Frequently Asked Questions (FAQ), please visit <http://aadcp2.org/aadcp-ii-tender-frequently-asked-questions/>

Any queries on the TOR should be sent to contact@aadcp2.org with the subject line: "**Query Study on the ASEAN Digital Economy Framework Agreement (DEFA)**"

XI. Additional Notes on Terms and Conditions of the Project

1. Any future studies/reports/analysis in any form of intellectual property rights (including but not limited to patents, copyright and any related rights) submitted by the Contractor to ASEAN arising out of or in connection to the services performed by the Consultant to ASEAN shall belong to ASEC under the

name of **ASEAN** only;

2. Successful bidder shall agree to be bound and sign the Special Services Agreement (SSA) with all requirements under the terms and conditions provided therein, including but not limited to the AADCP II Guidelines for the Contractors attached to the SSA.
3. As an intergovernmental organisation, ASEAN shall not be responsible for any tax(es), levy, tax claim or any tax liability which may be imposed by any law in relation to any amount payable by the ASEAN Secretariat.