



Request for Proposal (RFP)
IEG6: Research and Survey on the Dispute Prevention and Mitigation System in APEC Economies

Introduction

- A The APEC Secretariat is seeking proposals for the provision of the Services described in *RFP Schedule 1 – Statement of Requirement*.
- B Each Bidder to this RFP is expected to:
- (i) fully inform themselves on all aspects of the work required to be performed;
 - (ii) submit its proposal on the template provided at *RFP Schedule 2 – Proposal*, including the signed Declaration by Bidder at the end of *Schedule 2*; and
 - (iii) submit its proposal in accordance with *RFP Schedule 1 – Statement of Requirement* and with due note of *RFP Schedule 5 – Evaluation Criteria*.
- C Each Bidder, by submitting its proposal, agrees that the proposal is subject to the RFP Schedule 4 – Standard Conditions of Proposal, and agrees to comply with those conditions. Acceptance of a proposal will occur only when a contract is executed. Any Contract will incorporate the APEC policies and guidelines identified in RFP Schedule 3 - Special Conditions of Proposal and the contract at RFP Schedule 6 - Standard Contract Conditions.
- D Bids from contractors based in non-member economies and bids from international organisations may be considered. However, priority is given to suitably qualified tenders from member economies.

Structure of the RFP

The RFP has six parts:

- **Schedule 1: Statement of Requirement**
- **Schedule 2: Proposal Template**
- **Schedule 3: Special Conditions of Project Proposal**
- **Schedule 4: Standard Conditions of Request for Proposal**
- **Schedule 5: Evaluation Criteria**
- **Schedule 6: APEC Standard Contract Conditions**

RFP Schedule 1 – Statement of Requirement

Key Dates and Details

Event	Dates
Closing Time for submission of Proposals	23 October 2024 at 11:59 pm, Singapore time
Method to Submit Proposal	<p>The Proposal must be submitted in electronic copy, indicating the project number: IEG6.</p> <p>The Proposal (in PDF format) is to be submitted in the <u>same email message</u> to the Contact Officer (indicated below) by the closing time specified above:</p> <p>Dr Akhmad Bayhaqi, Policy Support Unit (PSU) Email: ab@apec.org</p> <p>Ms Esther Magalingam, Policy Support Unit (PSU) Email: enm@apec.org</p> <p>Proposals lodged in any manner other than as detailed in this paragraph, or are submitted after the deadline shall be deemed to be invalid and may be excluded from consideration.</p>
Contact Officer	<p>Dr Akhmad Bayhaqi Senior Analyst, Policy Support Unit (PSU) APEC Secretariat 35 Heng Mui Keng Terrace, Singapore 119616 Email: ab@apec.org</p>
Expected execution date of Contract	11 November 2024
Date Services are to be completed	The Services are required to be completed on or before 30 November 2025 .

The Services

The APEC Secretariat is seeking proposals for the **Research and Survey on the Dispute Prevention and Mitigation System in APEC Economies**¹.

1. Background

Dispute prevention and mitigation systems (e.g., the Ombudsman System) aim to resolve disputes between a foreign investor and a host economy before the dispute proceeds to arbitration or other formal legal proceedings, thereby contributing to dispute resolution. Examining the examples, details, and practical difficulties or operational challenges of such systems in APEC economies would help them consider introducing similar dispute prevention and mitigation mechanisms. This project may also support the enhancement of the quality of such systems in the APEC region. This would contribute to the implementation of the APEC Putrajaya Vision 2040 and the Aotearoa Plan of Action by promoting the flow of quality investment through supporting investment environments that are free, open, fair, non-discriminatory, transparent and predictable, and advance the work on the Free Trade Area of the Asia-Pacific (FTAAP) agenda, which contributes to high standard and comprehensive regional undertakings.

APEC economies have implemented various measures to establish a clear and efficient system for addressing investor concerns and preventing disputes which could include the creation of a central investment contact point and/or establishing an institutional system for dispute prevention and management (Table 1).

Table 1. Examples of good practices for dispute prevention and management in several APEC economies

<p>Establishing a central investment contact point: The Central Authority may be a new agency, housed within the Investment Promotion Agency (IPA), or part of an Inter-Ministerial Committee for grievances.</p>	<ul style="list-style-type: none"> Chile: Creation of an Inter-ministerial Committee for Defence of the State in International Investment Disputes and Regulation of Coordination for Resolution of such Disputes. Decree 125. 23 August 2016 (publication 27 December 2016). https://www.leychile.cl/N?i=1098279&f=2016-12-27&p= Peru: Article 7. Special Commission. Coordination and Response System for International Investment Disputes (SICRECI in Spanish). Law No. 28933, December 2006. https://docs.peru.justia.com/federales/leyes/28933-dec-15-2006.pdf
<p>Institutional Ombudsman System for Dispute Prevention and Management.</p>	<ul style="list-style-type: none"> Japan: The Office of Trade and investment Ombudsman. https://www8.cao.go.jp/kisei-kaikaku/oto/english/oto_about_e.html. Office of Invest Japan. http://www.invest-japan.go.jp/link/contact/en_index.html Korea: Korean Office of the Foreign Investment Ombudsman (OFIO). Legal Basis for Foreign Investment Ombudsman System: (a) Paragraphs 1, 2, and 10, Article 15-2 of the Foreign Investment Promotion Act; and (b) Paragraph 2, Article 21-4 of the Enforcement Decree of the Foreign Investment Promotion Act. Legal Basis for Operation of the Grievance Settlement Body: Paragraph 2, 3 and 5, 8, Article 21-4 of the Enforcement Decree of the Foreign Investment. https://ombudsman.kotra.or.kr/ob-en/index.do The Philippines. The Investment Ombudsman. Legal Basis: Sec. 15 (2), (3) RA 6770; Sec. 13 (2), Article XI, 1987 Constitution 2. Sec. 26 (1), (3) RA 6770; Rule IV, AO No. 07, as amended 3. Office Order No. 327 & 337, series of 2014. https://www.ombudsman.gov.ph/docs/investmentOmbudsman/investment_omb.pdf. USA: Select USA's Ombudsman. https://content.govdelivery.com/accounts/USITATRADE/bulletins/d25cc

Source: UNCITRAL, [Compilation of best practices on investment dispute prevention and mitigation](#), March 2023.

¹ The terms such as “national”, “nation”, “state” used in the text are for purposes of this document and do not imply the “political status” of any APEC member economy.

2. Objectives of the Project

It is important for APEC economies to establish free and open trade and investment environments in the APEC region in order to fuel growth, development, and a green transition. Businesses in APEC region may face some challenges that could deter them from investing capital, such as sudden policy changes or untransparent orders from the host economy, which could adversely affect their activities.

Trade and investment frameworks, including International Investment Agreements (IIAs), may provide some solutions for those challenges. In particular, IIAs generally contain investment disciplines that create obligations for host economies, such as national treatment (NT); most-favored nation treatment (MFN); General Treatment²; expropriation; communication frameworks³; and dispute resolution provisions such as mediation, State-to-State dispute settlement (SSDS), and investor-State dispute settlement (ISDS).

However, according to the UNCTAD World Investment Report 2023, ISDS is costly, as the disputing parties, incur significant expenditures for the arbitrators' work, the administration of proceedings and legal representation, all of which usually amount to several million dollars or more per case. Even though ISDS is one of several solutions for addressing the aforementioned challenges, there are other methods. Some APEC economies have introduced specific systems along with or instead of ISDS that focus on dispute prevention and mitigation. One of the most popular examples is the Ombudsman System.

To assess the range of options available to APEC economies and businesses seeking to prevent and mitigate investment disputes, it is necessary to examine the details of these systems in practice. By clarifying actual situations, including the practical issues or challenges of the Ombudsman System, it will be possible for many economies to learn whether both the interests of APEC economies and investors will be adequately protected under these systems.

This analysis will enhance each economy's deliberations on the pros and cons of introducing dispute prevention and mitigation systems and can assist them in enhancing existing mechanisms. Moreover, since well-functioning dispute prevention and mitigation systems are expected to contribute to supporting the overseas expansion of investors from APEC economies, this research could also improve investment environments in APEC region.

To summarize, the aims and objectives of the project are to examine and assess the effectiveness and efficiency of dispute prevention and mitigation systems, including the Ombudsman System, within APEC economies as alternatives or complements to traditional IIA-based dispute settlement mechanisms, with a focus on enhancing free and open trade and investment in the APEC region.

3. Scope of Services

3.1 Description of Services

The project will entail research and analysis on the following items:

- i. Whether dispute prevention and mitigation mechanisms have been introduced in IIAs that APEC economies have concluded and entered into force. Or separate from IIAs, whether APEC economies have established dispute prevention and mitigation mechanisms, either pursuant to IIAs or independently.

[**NOTE:** For the purpose of this research project, dispute prevention and mitigation mechanisms are intended to be mechanisms in which an organization is established with the nature of (1) one-stop contact point receiving grievances directly from foreign investors, (2) initiating an action to resolve such grievances.]

² For the purpose of this RFP, General Treatment refers to "fair and equitable treatment" and "full protection and security". Whether or not it also refers to Minimum Standard of Treatment (MST) depends on each IIA. For example, some IIAs concluded by Japan stipulate MST, while others do not.

³ For the purpose of this RFP, "communication frameworks" refers to provisions such as consultation provisions (e.g., CPTPP Article 9.18), mediation-type provisions, etc.

- ii. Details of dispute prevention and mitigation mechanisms of each economy, including which government structures are involved, organizational charts depicting oversight, and flow charts, as relevant.
- iii. Cases and actual performances of the dispute prevention and mitigation mechanisms in each economy. Particularly, this includes a survey of what types of investment disputes the mechanism is addressing, their relative frequency, the stage of the dispute, and the outcome after the intervention of the mechanism (e.g., whether the dispute was resolved or whether legal proceedings ultimately took place). The case studies should cover a diverse set of APEC economies, ideally encompassing different geographic regions, levels of development, legal systems, and types of mechanisms used. The selection should aim to provide a broad understanding of the effectiveness of these systems in various contexts, allowing a deep comparative analysis.

[NOTE: In conducting the surveys in (ii) and (iii) above, it is envisaged that interviews (either in-person or online) will be conducted with the officials of the target government that has introduced dispute prevention and mitigation mechanisms such as the Ombudsman System.]

The submitted proposal must clearly justify the robustness of the chosen methodology in achieving the research objectives. It should also demonstrate the Contractor's capability to execute the proposed methodology independently and effectively.

The Contractor is expected to utilize their own networks and resources for data collection and analysis. This includes tasks such as identifying, arranging, and conducting necessary surveys and/or interviews, as well as designing and implementing the methodology for data calculations, analysis, and verification.

Besides interviews with officials of the target government that has introduced dispute prevention and mitigation mechanisms, the surveys should include firms and take into account a balanced coverage across APEC member economies and industries. This approach will ensure that the collected data is comprehensive to support robust causal claims and inferences.

The Contractor should also be mindful of potential translation challenges, particularly when gathering data from economies where different languages are spoken. If required, it is essential to ensure that survey questions and interview guides are accurately translated. Misinterpretation due to language differences could compromise the integrity of the data, so steps must be taken to maintain data reliability and consistency across all economies.

3.2 Expected Outputs, Milestones and Services Delivery Dates

The Contractor will provide the following deliverables:

1. Detailed implementation plan
 - Development and Outline: Provide a comprehensive implementation plan outlining each stage of the project, including specific timelines, milestones, and deliverables. This plan should detail the sequence of activities, resource allocation, and key responsibilities.
 - Designing Instruments: Develop detailed procedures for creating data collection tools, such as surveys, questionnaires, and interview guides as necessary. Ensure these instruments are tailored to address the research objectives effectively. Implement a systematic approach for testing and refining these tools.
 - Methodology: Describe the methodologies and approaches to be employed throughout the project. This includes detailing how the research objectives will be met, the rationale for chosen methods, and any necessary adjustments to address challenges (such as potential biases) that may arise.
 - Risk Management: Identify potential risks and mitigation strategies to ensure the project stays on track. Include contingency plans for addressing unexpected issues. If necessary, ensure that appropriate approvals are obtained.

2. Data collection and verification
 - **Planning and Preparation:** Outline the procedures for designing and preparing data collection instruments, such as surveys, questionnaires, or interview guides. As appropriate, specify how these tools will be tested and refined prior to full deployment. Privacy considerations should be integrated into the design, particularly when handling sensitive information.
 - **Execution:** Describe the steps involved in data collection, including surveys and interviews as applicable, and gathering secondary data. Ensure robust procedures are in place to maintain data quality and reliability throughout the process.
 - **Monitoring and Reporting:** Establish mechanisms for tracking the progress of data collection, addressing issues that arise, and reporting on interim findings. Outline steps for verifying the completeness and accuracy of the data.
 - **Submission of Completed Data and Information:** Provide a finalized, well-structured dataset that is fully formatted and ready for analysis.
 - **Documentation:** Provide appropriate documentation of the data collection process, including any challenges faced and solutions implemented, to ensure transparency.

3. Analysis and interpretation of the collected data and findings
 - **Data Processing:** Implement the processes for data cleaning, validation, and preparation for analysis. Describe the analytical techniques used.
 - **Analysis:** Implement data analysis to address the research questions. This should include the use of appropriate research methods and analytical frameworks.
 - **Interpretation:** Interpret the findings within the scope of the research objectives. Discuss the results in comparison to existing literature and explain how they will be used to draw meaningful and actionable conclusions. If necessary, incorporate peer reviews mechanism to identify and correct potential biases in data interpretation and analysis.

4. Submission of Draft Report with proposed recommendations (including presenting the summary report to APEC economies in the Investment Experts' Group (IEG) meeting)
 - **Draft Report:** Prepare and submit a draft report that includes a comprehensive summary of the research findings, analysis, and proposed recommendations. This draft will then be reviewed and refined based on feedback from APEC stakeholders.
 - **Presentation:** If required, present the report to APEC economies during the IEG meeting. This presentation should clearly convey the key findings and recommendations and provide an opportunity for discussion and feedback.

5. Submission of Final Report with recommendations
 - **Final Report:** Based on feedback from the draft report and presentation, finalize the report to include any necessary revisions and additional insights. The final report should present a comprehensive and well-refined account of the research, along with clear, actionable recommendations.

Proposed Milestone Schedule

#	Services	Format	Quantity	Means of Verification	Services Delivery Date	Fee (in SGD, inclusive of taxes)
1	Detailed implementation plan	e-copy in MS Word	One e-copy	Written acceptance from PSU Project Lead	30 November 2024	10%
2	Data collection and verification	e-copy in MS Word	One e-copy	Written acceptance from PSU Project Lead	28 February 2025	30%
3	Analysis and interpretation of the collected data and findings	e-copy in MS Word and MS PPT	One e-copy	Written acceptance from PSU Project Lead	30 April 2025	10%

#	Services	Format	Quantity	Means of Verification	Services Delivery Date	Fee (in SGD, inclusive of taxes)
4	Submission of Draft Report	e-copy in MS Word; in publication-ready format	One e-copy	Written acceptance from PSU Project Lead	30 June 2025	20%
5	Submission of Final Report	e-copy in MS Word; in publication-ready format	One e-copy	Written acceptance from PSU Project Lead	15 September 2025	30%

Note: (i) The services delivery dates above may change depending on the exact dates for APEC committee meetings and other factors. (ii) The fee is subject to the satisfactory completion of the Services.

The Bidder is required to prepare a detailed itemized budget in submitting their proposal. Proposal costs are to be presented in Singapore Dollars and **should not exceed a total amount of SGD 110,000 (Singapore Dollars One Hundred and Ten Thousand)**. **Proposals above this amount which can provide a detailed justification for the higher cost and evidence to demonstrate value for money will not be excluded.** Submitted budget proposal should factor in any costs for local translator and/or interpreter, document translation and other costs that would be necessary to achieve the objectives of the project, perform the services and complete the deliverables.

Travel costs for attending APEC-related meetings to present or report on the project, if travelling is required, will be separately funded on the basis of economy class airfare and per diem. However, the time involved in preparing for the presentations and travelling to such meetings will be considered part of the Contractor's commitment to the project and will not be separately compensated.

3.3 Qualifications of Bidder

The Bidder will need to supply evidence of ability and experience to undertake the specified objectives in this RFP, and explain their approach to the Services including:

- a) Demonstrated experience and expertise in developing in-depth case studies related to investment projects.
- b) Proven business and policy experience in implementing qualitative research methodologies.
- c) Strong global business networks, preferably in the targeted FDI locations.
- d) An in-depth knowledge of the FDI locations targeted in the study, along with strong connections and the ability to establish rapport with relevant stakeholders in these economies.
- e) A proven track record of delivering high-quality reports on time and within budget.
- f) Excellent analytical, research, and plain English writing skills to ensure clear and concise communication.

[Please also refer to RFP Schedule 5 – Evaluation Criteria]

3.4 Additional Requirements

The reference documents for the study include, but are not limited to, the following:

1. Aotearoa Plan of Action. Available at: <https://www.apec.org/meeting-papers/leaders-declarations/2021/2021-leaders-declaration/annex-aotearoa-plan-of-action>
2. Review of the APEC Investment Facilitation Action Plan. Available at: [https://www.apec.org/publications/2023/11/review-of-the-apec-investment-facilitation-action-plan-\(ifap\)-forging-a-stronger-recovery](https://www.apec.org/publications/2023/11/review-of-the-apec-investment-facilitation-action-plan-(ifap)-forging-a-stronger-recovery)
3. UNCITRAL Model Provisions on Mediation for International Investment Disputes. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/model_provisions_e_1.pdf

4. UNCITRAL Guidelines on Mediation for International Investment Disputes. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/guidelines_e_1.pdf
5. UNCITRAL Working Group III “Compilation of best practices on investment dispute prevention and mitigation March 2023”. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/wg_iii_compilation_on_dispute_prevention_and_summary.pdf
6. UNCTAD Investor–State Disputes: Prevention and Alternatives to Arbitration. Available at: https://unctad.org/system/files/official-document/diaeia200911_en.pdf
7. OECD Stocktaking of Investment Dispute Management and Prevention in the Southern Mediterranean Region. Available at: https://www.academia.edu/41988722/Stocktaking_of_Investment_Dispute_Management_and_Prevention_in_the_Southern_Mediterranean_Region

3.5 Reports and Publications

Reports for publication must be prepared in accordance with the Guidebook on APEC Projects, APEC Publication Guidelines, PSU Style Guide, and APEC Branding Manual. The reports must be certified by the PSU Project Lead and endorsed by the relevant APEC Working Group or Steering Committee, prior to submission to APEC Secretariat for approval to be published. Reports submitted to the APEC Secretariat must not require any further copy-editing and will be presented in a level of English fit for publication.

3.6 Reporting and Coordination Arrangements

- a) The PSU will oversee the management of this project and expect to have a high level of involvement. The PSU Project Lead for this project is Senior Analyst, Dr Akhmad Bayhaqi.
- b) The selected Contractor will liaise with the PSU Director and PSU Project Lead concerning the negotiation of contract, the implementation process for the project, and the outputs generated. This may include meeting certain protocols, taking into account certain sensitivities, adhering to a range of guidelines, procedures and processes as well as being aware of the limitations and expectations in APEC. The Contractor will also need to consider the perspectives of relevant stakeholders in the course of completing this project including those of the IEG and other relevant APEC fora.
- c) The PSU Project Lead will coordinate closely with the Contractor in completing the deliverables.

4. Payment

- 4.1 Subject to the satisfactory completion of the Services, the APEC Secretariat shall pay the selected Contractor **up to SGD 110,000 (Singapore Dollars One Hundred and Ten Thousand)** according to the Milestone Payments Schedule identified above at Clause 3.2. Any payment is inclusive of any Goods and Services Tax (GST) and bank charges levied by the selected Contractor’s agent and/or beneficiary banks for remittances made to the selected Contractor’s bank account. The Bidder is required to prepare a detailed itemised budget in submitting their proposal, including consultancy fees and administrative support charges, with unit cost and the number of hours/days proposed to be devoted to the project.
- 4.2 The APEC Secretariat shall make payment on Contractor Fee according to the Milestone Payments Schedule identified above at Clause 3.2 and/or as soon as practicable after approving the Milestone and receiving the appropriate invoices and accompanying supporting documentation from the selected Contractor. The selected Contractor must complete the Services by **30 November 2025**.

RFP Schedule 2 – Proposal Template (to insert company logo)

Instructions to assist Bidders to complete their proposal have been included as white text on a black background.

Instruction to Bidders:

Ensure your response covers off on the evaluation criteria identified in Schedule 5 - Evaluation Criteria.

Bidder's Details

Full legal name and postal address:

Business registration number (if applicable):

Contact Officer

For all matters relating to this RFP, the Bidder's Contact Officer will be:

Name/position title:

Telephone

Mobile:

Email:

Contract Manager

Instruction to Bidders:

Bidders should provide the requested details of the person who is the Bidder's proposed Contract Manager, responsible for general liaison and accepting and issuing any written notices under the contract, if a contract is awarded.

Name/position title:

Telephone:

Mobile:

Email:

Bidder's Proposal

Instruction to Bidders:

Bidders should describe how they will meet the requirements set out in Schedule 1. Include Method and Workplan.

Proven Capacity

Statement of Skills and Experience

Instruction to Bidders:

Bidders should provide evidence of their skills and experience in providing the Services. Give evidence of why you/your company/your team members are most capable to deliver the Services. Ensure this responds to the requirements of this project, identified in Schedule 1 "the Services".

Specified Personnel

Instruction to Bidders:

List who will do what. Attach CVs where appropriate. Note that any fees shown in this table form part of the pricing itemised budget below – they are not additional. If no Specified Personnel insert “Not applicable”.

Name	Position/Role	Rate (\$SGD, inclusive of taxes)	Anticipated Time	Total for Person
Total (inclusive of tax)				\$SGD

Subcontractors

Instruction to Bidders:

Bidders must provide (in the form of the table below) details of any subcontractors that the Bidder proposes to engage to deliver the Services and an explanation for using subcontractors. If no subcontractors will be used insert “Not applicable”.

Proposed subcontractor (full legal name)	Scope of services to be subcontracted and technical significance	Fees and associated expenses (inclusive of tax)

Pricing

1. Itemised budget (all pricing must be inclusive of taxes)

Instruction to Bidders:

Prepare a detailed itemised budget in your proposal, including specification of:

- Consultancy fees and administrative support charges, with unit cost and the number of hours/days proposed to be devoted to the project;

If there are reimbursable items in your proposal (if stated in the RFP Schedule 1), refer to the Guidebook on APEC Projects that sets out guidelines for reimbursable items.

Conflict of Interest

Instruction to Bidders:

This is a mandatory field, a response is required. If there is no conflict of interest then state that. If a real or perceived conflict of interest exists with the submission of a proposal, or would exist if the Bidder entered into a contract with the APEC Secretariat for the Services in this proposal, full details should be included here. Detail a plan to manage the conflict of interest.

Standards and Best Practice

Instruction to Bidders:

If there was a requirement in Schedule 1, you must respond here.

Bidders must complete and sign a Declaration in the form presented below.

Declaration by Bidder

The Bidder proposes to provide the Services described in *Schedule 1* to the RFP (*Statement of Requirement*) on the following terms:

- the RFP Schedule 1 - Statement of Requirement;
- the proposal is submitted according to Schedule 2 – Proposal Template;
- the RFP Schedule 3 – Special Conditions of Proposal;
- the RFP Schedule 4 - Standard Conditions of Request for Proposal; and
- the APEC Standard Contract Conditions described at RFP Schedule 6.

These documents collectively comprise the Bidder's "**Proposal**".

The Proposal

The Bidder agrees to enter into a contract to provide the Services in accordance with its Proposal in the form of the *Standard Contract* at Schedule 6 of this RFP which incorporates by reference APEC Terms and Conditions of Contract, and in accordance with APEC Guidelines referenced in RFP Schedule 3.

The Bidder agrees that the APEC Secretariat may accept or decline the Bidder's Proposal at its discretion. No commitment or contract exists until a contract in the form of the *Standard Contract* is executed by both parties.

The Bidder agrees that participation in any stage of the RFP process is at the Bidder's sole risk and cost.

Conflict of Interest

At the time of submitting a proposal, the Bidder agrees there is no conflict of interest (real or perceived) unless specifically and clearly identified in their proposal (see Schedule 2, under heading Additional Information) with a recommended plan to manage the conflict of interest.

The Bidder agrees to notify the APEC Secretariat immediately if an actual or potential conflict of interest arises.

..... Signatory's printed name: Signatory's signature:
..... Signatory's Position Date
..... Signatory's Phone Number Signatory's Email Address

RFP Schedule 3 – Special Conditions of Proposal

1. APEC POLICIES

Bidders should familiarise themselves with [APEC Policies, Guidebooks and Guidelines](#) as they are all applicable to the management and delivery of APEC projects:

- (a) Guidebook on APEC Projects;
- (b) APEC Branding Manual; and
- (c) APEC Publications Guidelines.

These Policies describe APEC's approach to contracting activities, expectations of team members and contractors, and state specific requirements for use of APEC logo, branding and APEC nomenclature and other publishing requirements. Bidders are encouraged to access and inform themselves of this set of guidelines which are available on APEC's internet site at <https://www.apec.org/about-us/about-apec/policies-and-procedures>.

RFP Schedule 4 – Standard Conditions of Request for Proposal

1. GENERAL

Bidders should submit proposals in the format provided at RFP Schedule 2 - Proposal Template, in response to the requirements stated in RFP Schedule 1. Proposals must be provided in English and prices must be quoted in Singapore Dollars.

2. APEC SECRETARIAT'S RIGHT TO DECLINE

The APEC Secretariat, at its discretion, may discontinue the RFP; decline to accept any proposal; decline to issue any contract; or satisfy its requirement separately from the RFP process.

3. CHANGES TO REQUEST FOR PROPOSALS

The APEC Secretariat may, at its discretion, vary the Request for Proposals before the Closing Time. Changes will be posted on the APEC website as a Revision, beside the original RFP. The Bidder is encouraged to regularly monitor the APEC website to ensure they access any Revisions that may be released.

4. CONTRACT

If the Proposal of the Bidder is accepted by the APEC Secretariat, the Bidder shall execute a contract in a standard form ("the Contract") within the time period specified by the APEC Secretariat. See Standard Contract Conditions at RFP Schedule 6, which will form part of the Contract.

5. LODGEMENT

5.1 All documentation submitted as part of the Proposal must be in English.

5.2 Bidders are required to include all information specified in this RFP in their Proposal. Bidders accept that their failure to provide all information required, in the format specified may result in their Proposal being considered as a non-conforming Proposal and liable to rejection.

6. EVALUATION OF PROPOSALS

6.1 The evaluation panel will evaluate proposals to determine best value for money outcome. The panel will consist of members appointed at the APEC Secretariat's discretion.

6.2 The criteria for evaluation will be assessed according to the criteria outlined at Schedule 5 - Evaluation Criteria.

7. FINANCIAL INFORMATION

If requested by APEC Secretariat, the Bidder must be able to demonstrate its financial stability and its ability to remain viable as a provider of the Services over the term of any agreement.

8. REFERENCES

As part of the evaluation of proposal process, the APEC Secretariat, at its discretion, may request from the Bidder information on past projects/experience claimed in the Bidder's proposal, including contact details for referees.

9. NO CONTRACT OR UNDERTAKING

Nothing in this RFP will be construed to create any binding contract (express or implied) between APEC Secretariat and any Bidder until a written Contract, if any, is entered into by the parties.

10. BIDDERS ACKNOWLEDGEMENT

- 10.1 The Bidder acknowledges by lodging a Proposal that it accepts the terms of this RFP Standard Conditions of Request for Proposal, the Special Conditions of Proposal and the APEC Standard Contract Conditions.
- 10.2 A Proposal is submitted on the basis that the Bidder:
- (a) has examined this RFP and any other documents referenced or referred to herein, and any other information made available in writing by APEC Secretariat to Bidders for the purposes of submitting a Proposal; and
 - (b) has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having effect on its Proposal.

11. CONFLICT OF INTEREST

- 11.1 Conflict of interest can be defined as any situation in which an individual or organisation is in a position to exploit his/her professional or official capacity in some way for personal or corporate benefit.
- 11.2 Bidders must identify in their Declaration by Bidder:
- (a) any actual or potential conflict of interest; and
 - (b) the procedures they intend to implement for dealing with, any actual or potential conflicts of interest, which may arise in connection with the submission of their Proposal or the conduct of the Services in a Contract, as described in this RFP. Bidders should include details of any known circumstances that may give rise to either an actual or potential conflict of interest in relation to the project.
- 11.3 Bidders must notify the APEC Secretariat immediately if any actual, potential or perceived conflict of interest arises after submission of a proposal (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions are likely to be compromised).
- 11.4 If any actual or potential conflicts of interest arise for a Bidder, the APEC Secretariat may:
- (a) enter into discussions to seek to resolve such conflict of interest;
 - (b) disregard the Proposal submitted by such a Bidder; or
 - (c) take any other action that APEC considers appropriate.

12. INSURANCE

The Bidder must ensure that it and its subcontractors maintain insurance policies relevant to the delivery of Services identified in this RFP, in the event that the Bidder is awarded the contract.

13. CLARIFICATION

APEC reserves the right to seek clarification or additional information from any Bidder related to their proposal.

EVALUATION CRITERIA

1. The Evaluation Criteria detailed in this clause apply to this Proposal, and the Bidder's response to them:

(a) **THE ORGANISATION:**

- Demonstrated experience in previous similar projects and quality of work.
- Demonstrated ability to provide adequate management and support to deliver the Services.
- Evidence of the capacity to deliver high quality projects on time and within budget.

(b) **APPROACH TO THE SERVICES:**

- Demonstrated appreciation of the key issues and risks to achieve the objectives as outlined in the RFP.
- Appropriate methodology and work plan to fulfil the objectives of the Services in the specified timeframes.

(c) **ANALYTICAL AND RESEARCH SKILLS:**

- Proven analytical and research skills in past projects.
- Proven report writing skills in English for non-technical audience.

(d) **EXPERIENCE WITH APEC ECONOMIES:**

Demonstrated experience working with APEC member economies.

(e) **PROPOSAL COST:**

Appropriate qualifications, experience and skills of personnel and team balance to implement the Services.

RFP Schedule 6 – APEC Standard Contract Conditions
(excerpt from the APEC Standard Project Template)

THE APEC SECRETARIAT AND THE CONTRACTOR AGREE TO THE FOLLOWING:

3. PARTIES & ENGAGEMENT

- 3.1 The Parties to this Contract are the APEC Secretariat and the Contractor.
- 3.2 APEC Secretariat appoints the Contractor, and the Contractor accepts such appointment, to provide the Services during the term of this Contract, subject to the terms and conditions of this Contract.
- 3.3 This Contract is effective from the date of this Contract and shall continue in force thereafter until expiration, subject to earlier termination in accordance with this Contract.
- 3.4 The Contractor shall not be entitled to delegate or sub-contract any of its duties or obligations under this Contract to any person without the prior written consent of the APEC Secretariat.
- 3.5 The Contractor shall perform its obligations with reasonable care and skill. Whilst the Contractor's method of work is its own, the Contractor shall be responsible to the APEC Secretariat for the performance of the Services and shall comply with the APEC Secretariat's reasonable requests as to the effective performance of the Services.

4. INVOICES

- 4.1. Upon completion of a Milestone in accordance with the terms and conditions of this Contract, the Contractor shall submit invoices certified by its director to the APEC Secretariat to claim payment in respect of that Milestone and any approved Reimbursable Cost items as identified at Clause 2 in the Special Conditions. Original or electronic copies of the invoices may be submitted. The invoices must be accompanied by all supporting documentation as set forth in the Guidebook on APEC Projects as may be varied from time to time, or such other documents reasonably requested by APEC Secretariat.
- 4.2. Invoices shall include the following information:
 - 4.2.1. full name and number of project;
 - 4.2.2. name of Contractor;
 - 4.2.3. invoice date and invoice number;
 - 4.2.4. description of Milestone and the Services and any other ancillary services relating thereto provided to APEC Secretariat and the dates of completion and delivery of such Milestone;
 - 4.2.5. description of each item of Reimbursable Costs in compliance with Clause 4.3 below;
 - 4.2.6. charges and payments for previous invoices;
 - 4.2.7. charges for billing period;
 - 4.2.8. detailed banking instruction which includes the bank name, branch name, bank SWIFT code, account holder's name and number;
 - 4.2.9. billing by company/organisation rather than individual requires the official letter head of the company/organisation;
 - 4.2.10. a signed statement by the Contractor that the Services have been performed in accordance with the terms and conditions of this Contract, and the fees and costs being billed are true and correct and have not been previously paid; and
 - 4.2.11. the invoice should be accompanied by an endorsement by the Project Overseer that the Services have been satisfactorily completed.
- 4.3. Requirements for seeking reimbursement of any approved Reimbursable Costs identified at Clause 2 in Special Conditions include:
 - 4.3.1. providing the APEC Secretariat with airfare invoice and e-ticket receipt, and all other supporting documents and invoices.
 - 4.3.2. Per Diems do not need to be acquitted, however the Contractor shall only claim per diem in accordance with the rules set out in the Guidebook on APEC Projects, and the claim must be accompanied by written confirmation from the Project Overseer. To claim reimbursement for

workshop expert's or participant's travel and per diem, confirmation that each claimant attended the event each day and is therefore eligible for daily per diem is required. An attendance sheet signed by each claimant is recommended.

5 APEC SPECIFIC POLICIES AND PROCEDURES

- 5.1 The Contractor shall and hereby agree to complete the Services in accordance with the terms and conditions of this Contract and the requirements set out in the APEC Publication Guidelines, APEC Branding Manual and the Guidebook on APEC Projects, as found in the Policies and Procedures section on the APEC website.

6 EXAMINATION OF RECORDS

- 6.1 Upon request, the Contractor shall provide the APEC Secretariat or its designated entities/persons with full access to and copies of any materials (in any form or medium) relevant to the Contract, including (but not limiting to) the following:

- 6.1.1 electronic documents and data;
- 6.1.2 financial books, records and accounts;
- 6.1.3 documents;
- 6.1.4 papers; and
- 6.1.5 other information and records in any medium which document transactions related to the Contract.

- 6.2 The Contractor's obligation to provide access and copies of the materials commences from the date on which the Contract is made and continues for a period of three (3) years following the completion of the Services or the termination of this Contract, as the case may be.

7 ASSIGNMENT

- 7.1 The Contract is intended to cover a relationship between the Parties only. The Contractor shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer the Contract or any interest or benefit arising out of, or in connection with, the Contract to a third party without the prior written approval of the APEC Secretariat.

8 CHANGES TO CONTRACT

- 8.1 The APEC Secretariat and the Contractor may change the terms of the Contract by written agreement signed by both Parties.

9 CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE

- 9.1 If the Contractor, its employees, agents or contractors directly or indirectly causes any injury or damage to any person or property during the performance of the Contract, the Contractor will bear all liability. If a person makes a claim against the APEC Secretariat and/or its members, officers, employees, agents and contractors ("**Indemnified Group**") (whether during or after the completion and/or termination of the Contract) for any injury or damage to any person or property directly or indirectly caused by the Contractor, its employees, agents or contractors during the performance of the Contract, the Contractor shall fully indemnify, defend and hold harmless the Indemnified Group from and against any and all Losses, whether criminal or civil or otherwise, suffered or incurred by the Indemnified Group in connection therewith and reimburse the Indemnified Group for any costs or expenses they have incurred in connection therewith (including actual legal costs on a full indemnity basis) whether during or after the completion and/or termination of the Contract.

- 9.2 The Contractor shall fully indemnify, defend and hold harmless the Indemnified Group from and against any and all Losses, suffered or incurred by any of them as a result of or in connection with a claim asserted by any person to the extent arising from or as a result of:

9.2.1 the Contractor's breach of this Contract or violation of any applicable law;

9.2.2 the Contractor's wilful default, gross negligence, fraud or dishonesty in relation to: (i) its obligations under this Contract or (ii) the Services provided hereunder;

- 9.2.3 infringement or misappropriation of a third party's Intellectual Property Rights in connection with any Services delivered under this Contract or any Work utilized by the APEC Secretariat, its licensees or assigns, as determined by a Court order, an arbitration award, or by the Contractor's own admission; or
- 9.2.4 any allegation that Intellectual Property Rights utilized by the Contractor in connection with this Contract infringes or misappropriates a third party's Intellectual Property Rights.
- 9.3 For the purpose of this Clause 9:
- 9.3.1 "**claim**" shall mean all demands, proceedings, claims and liabilities (whether criminal or civil, in contract, tort or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including without limitation legal costs) incurred in connection therewith; and
- 9.3.2 "**Loss**" or "**Losses**" means any loss, liability, obligation, cost, damage, royalty, deficiency, action, judgment, interest, penalty, tax, fine, cost, or expense of whatever kind, including all reasonable attorneys' fees in connection with the foregoing, and the cost of enforcing any rights hereunder and the cost of pursuing any insurance providers.

10 DEFAULT

- 10.1 A Default is anything the APEC Secretariat considers to be a significant breach of the Contract, including:
- 10.1.1 failure to perform an obligation under the Contract within the agreed time; or
- 10.1.2 failure to deliver outputs of satisfactory capability, quality or reliability.
- 10.2 In the event of a Default by the Contractor, the APEC Secretariat shall write to the Contractor setting out the Default and the time by when the Contractor must fix it. If the Contractor fails to fix the Default within the time specified, the APEC Secretariat may immediately terminate the Contract by issuing a written Notice of Termination to the Contractor.
- 10.3 Termination under this clause does not affect the rights and/or remedies either party may have accumulated up to the date of termination including the rights and/or remedies the APEC Secretariat may have in relation to the Default.

11 RIGHTS IN DATA

- 11.1 If intellectual property or confidential information is required to enable the Contractor to provide the Services, the Contractor shall be solely responsible for obtaining approvals for the use of any intellectual property and/or confidential information that belongs to anyone else (i.e. third parties).
- 11.2 The APEC Secretariat shall own all intellectual property and confidential information that it creates in relation to the Services. The APEC Secretariat shall own all intellectual property and confidential information that the Contractor creates as a result of performing the Services. In particular, the APEC Secretariat shall own the following:
- 11.2.1 all data resulting from performance of the Contract, regardless of its form, format, or media;
- 11.2.2 all data (other than that owned by third parties) used in performing the Contract regardless of its form, format, or media;
- 11.2.3 all data delivered under the Contract making up manuals or instructional and training materials;
- 11.2.4 all processes provided for use under the Contract; and
- 11.2.5 all any other data delivered under the Contract.
- 11.3 If the Contractor wishes to use the intellectual property and/or confidential information (mentioned in Clause 11.2 above) for purposes that are not in relation to the performance of the Services, it must obtain prior written consent from the APEC Secretariat.
- 11.4 The Contractor consents to the APEC Secretariat's use of the Contractor's own intellectual property and/or confidential information if the APEC Secretariat requires the Contractor's own intellectual property and/or confidential information to use the Services.

11.5 The Contractor shall protect all intellectual property and/or confidential information belonging to the APEC Secretariat vigorously to the extent permissible by law. If the Contractor has a reasonable suspicion that there has been any event that infringes the rights of the APEC Secretariat in relation to its intellectual property and/or confidential information, it will inform the APEC Secretariat immediately in writing.

12 DATA PROTECTION

12.1 In this clause:

12.1.1 "**APEC Personal Data**" means any personal data made available by or collected from the APEC Secretariat in connection with the performance of this Contract; and

12.1.2 "**Data Protection Legislation**" means all laws and regulations that are applicable to the collection, use, processing or disclosure of the APEC Personal Data, which may include, but is not limited to, the Personal Data Protection Act 2012.

12.2 The Contractor shall comply, at its own cost, with all Data Protection Legislation in connection with its performance of this Contract.

12.3 Without affecting the generality of the foregoing:

12.3.1 The Contractor shall only process, use or disclose the APEC Personal Data: (a) for the purposes of fulfilling its obligations and providing the Services; (b) with the APEC Secretariat's prior written instructions; or (c) when required by law or an order of court but shall notify the APEC Secretariat as soon as practicable before complying with such law or order of court, if such notice is permitted by law, at its own cost.

12.3.2 The Contractor acknowledges that the APEC Personal Data, whether tangible or intangible (of whatever type or description, and whether or not capable of being reduced to a written form) shall remain confidential, proprietary and/or a trade secret of the APEC Secretariat, and no license or other rights, except in accordance with this Contract, are granted or implied hereby.

12.3.3 The Contractor shall not, without the APEC Secretariat's prior written consent, transfer the APEC Personal Data to a location outside of the economy or territory where it was received by the Contractor, or remotely access the APEC Personal Data from any economy or territory other than where it was received by the Contractor. If the APEC Secretariat provides such instructions, the Contractor shall provide a written undertaking to the APEC Secretariat that the transferred APEC Personal Data will be protected to a standard that is comparable to that under this Contract. The Parties shall cooperate in good faith to enter into any additional agreement necessary to ensure compliance with Data Protection Legislation with regard to any international transfers of the APEC Personal Data.

12.3.4 The Contractor shall protect the APEC Personal Data in its control or possession by implementing reasonable and appropriate technical, organizational and security arrangements.

12.3.5 The Contractor shall provide the APEC Secretariat with a copy of the APEC Personal Data that the Contractor has in its possession or control, as soon as practicable upon the APEC Secretariat's written request.

12.3.6 Except as required or permitted by applicable law, the Contractor shall not retain the APEC Personal Data for any period of time longer than is necessary to provide the Services. Unless retention of the APEC Personal Data is required or permitted by applicable law, upon the APEC Secretariat's request or the termination of this Contract (as the case may be), the Contractor shall at the APEC Secretariat's election: (a) return all APEC Personal Data to the APEC Secretariat; or (b) delete all APEC Personal Data in its possession or control; and after returning or deleting such APEC Personal Data, provide the APEC Secretariat with written confirmation that it no longer possess or controls any APEC Personal Data. Where applicable, the Contractor shall also instruct all Sub-processors (as defined below) to whom it has disclosed the APEC Personal Data to, at the APEC Secretariat's election, return to the APEC Secretariat or delete, such APEC Personal Data.

12.3.7 The Contractor shall promptly notify the APEC Secretariat when the Contractor becomes aware of any breach of its obligations under this Clause 12, including any breach of the Data Protection Legislation ("**Breach**"), which could affect the confidentiality, integrity or availability of the APEC Personal Data, but in no event later than 48 hours of becoming aware of such Breach. The Contractor shall promptly take all reasonable steps, in consultation with the APEC Secretariat, to rectify, prevent or stop, and mitigate the consequences of such Breach.

12.4 The Contractor represents and warrants that it will not engage third parties for the processing of the APEC Personal Data ("**Sub-processors**") without prior specific or general written authorization of the APEC Secretariat. The APEC Secretariat will have the right to object to any engagement of Sub-processors at the APEC Secretariat's sole discretion, for any or no reason. The Contractor further represents and warrants that it will only enter into written contracts with approved Sub-processors who guarantee at least a level of data protection and information security as provided herein, and the Contractor will remain fully liable to the APEC Secretariat for any Sub-processor's failure or omission to comply with such data protection obligations.

13 CONFLICT OF INTEREST

13.1 The Contractor warrants, agrees and undertakes with the APEC Secretariat that neither the Contractor nor its employees, servants and/or agents has any arrangement, employment, interest, activity, or relationship with another person that could impair the Contractor's ability to act impartially and effectively in the delivery of the Services as required by this Contract.

13.2 The Contractor shall exercise its responsibility in the best interests of the APEC Secretariat and shall not engage in any activities that would place the Contractor in a conflict of interest with the APEC Secretariat nor conflict with any responsibilities or duties owed by the Contractor to the APEC Secretariat pursuant to this Contract.

13.3 If the Contractor becomes aware of any actual or potential conflict of interest as defined in Clause 13.1 and 13.2 above, the Contractor shall immediately notify the APEC Secretariat in writing of (i) any such actual or potential conflict of interest and (ii) the procedures it intends to implement to resolve any such actual or potential conflict of interest.

13.4 The APEC Secretariat may suspend the Services, terminate the Contract or take any other actions that the APEC Secretariat considers as appropriate in its sole discretion, if any actual or potential conflict of interest arises. If the APEC Secretariat directs the Contractor to take action(s) to resolve that conflict, the Contractor shall comply with any such direction(s) within reasonable time.

14 CONFIDENTIALITY

14.1 The Contractor shall keep all Confidential Information in strict confidence and shall not, either during the term of the Contract or after the termination of the Contract for any reason (i) disclose or permit to be disclosed any Confidential Information to any third party, or (ii) make use of or permit to be made use of, any Confidential Information whether such information was received during the period of this Contract or otherwise, without the prior written consent of the APEC Secretariat, except for disclosure to Contractor's boards of directors, shareholders, employees and attorneys, in each case on a need-to-know basis provided always that the Contractor shall use its best endeavours to procure that each of such receiving person adheres to the confidentiality obligations contemplated herein as if that person were a party to this Contract.

14.2 The Contractor's obligations in Clause 14.1 shall not apply to any information which:

14.2.1 is publicly available or becomes publicly available other than by reason of direct or indirect breach of this Contract;

14.2.2 the Contractor is required to disclose under any applicable law or by order of a court of competent jurisdiction, any governmental or regulatory body, tribunal or any stock exchange.

14.3 The Contractor shall ensure that its directors, shareholders, employees, attorneys, servants and/or agents to whom the Contractor discloses the Confidential Information comply with the provisions of this Clause 14.

14.4 Upon termination of this Contract for whatever reason, the Contractor shall immediately deliver up to APEC Secretariat all property, working papers and other material and copies thereof, which relate to its duties or obligations under this Contract provided to it, prepared by it or in its possession or under its control. Property and material under this Clause include (but are not limited to) correspondence, diaries, address books, databases, files, reports, minutes, plans, records, documentation or any other medium for storing information. The Contractor's obligations under this Clause include the return of all copies, drafts, reproductions, notes, extracts or summaries (however stored or made) of all documents and software.

14.5 For the purpose of this Contract, **Confidential Information** include any trade secret or any information in respect of which APEC Secretariat is bound by an application of confidence to any third party, any information relating to or belonging to APEC Secretariat, its operation and affair, any APEC member economies, this Contract (including its contents and existence), or any information that the Contractor may acquire or receive under or in connection with this Contract, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information.

14.6 This Clause 14 shall survive the termination or expiration of this Contract.

15 INSURANCE

15.1 The Contractor shall maintain and pay all premiums in respect of an insurance policy or policies relevant to the delivery of the Services with policy limits and provisions conforming to such requirements as the APEC Secretariat may from time to time prescribe and shall ensure that the APEC Secretariat shall be entitled to the benefit of such insurance.

16 SUSPENSION OF SERVICES

16.1 The APEC Secretariat may, at any time, give a written order to the Contractor, suspending all, or part, of the Services. The APEC Secretariat has full and sole discretion to decide the length of the suspension. Upon receiving the order, the Contractor must immediately comply with its terms and take all steps necessary to minimize any and all costs resulting from the suspension. The APEC Secretariat and the Contractor shall negotiate any adjustment to the price and/or schedule for completing the Services, which may result from the suspension.

17 TERMINATION BY THE APEC SECRETARIAT

17.1 The APEC Secretariat may terminate this Contract, in whole or in part, by issuing a written Notice of Termination. The APEC Secretariat may terminate this Contract without giving any reasons.

17.2 If this Contract is terminated, the APEC Secretariat and the Contractor shall negotiate the rights, duties, and obligations of the Parties, including but not limited to compensation to the Contractor and/or the APEC Secretariat. Any compensation to the Contractor must not exceed the total value of the Contract, which is set out in Clause **Error! Reference source not found.**, "Payment" in Special Conditions.

17.3 Upon receiving a Notice of Termination, the Contractor shall immediately stop work as specified in the notice, except if directed otherwise by the APEC Secretariat.

17.4 Upon receiving a Notice of Termination, the Contractor shall submit a final termination settlement proposal to the APEC Secretariat. The settlement proposal must include a certification from the Project Overseer of the actual costs the Contractor has incurred.

17.5 If the Contractor fails to submit the termination settlement proposal within seven (7) days from the date of the Notice of Termination, the APEC Secretariat may in its sole discretion determine the amount, if any, due to the Contractor under this Contract following the termination.

17.6 Upon termination of the Contract, subject as provided in this Clause and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.

17.7 Termination under this Clause does not affect the rights and/or remedies which either Party may have accrued or accumulated up to the date of termination of the Contract.

18 LANGUAGE AND NOMENCLATURE

18.1 All of the Services, including any drawings, documents, information, correspondence, test reports and similar items must:

18.1.1 be in the English language; and

18.1.2 comply with the nomenclature requirements set out in the APEC Publication Guidelines as found in the Policies and Procedures section on the APEC website.

19 INTERPRETATION

19.1 Should a dispute about the meaning of any term in the Contract arise, the APEC Secretariat may make a written determination as to the term's meaning. A written determination made under this Clause shall be final and conclusive, and binding, between the Parties.

19.2 Unless otherwise defined in this Contract, definitions or interpretation of the terminology, abbreviations, terms, and acronyms used or referred to in this Contract can be found in the Glossary of Terms on the APEC website, which may be amended and/or updated by APEC and/or its committees from time to time.

20 LAW & JURISDICTION

20.1 The laws of the Republic of Singapore shall govern this Contract.

20.2 Any dispute arising out of or in connection with this Contract, including any question regarding its existence validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this Clause. The tribunal shall consist of one (1) arbitrator mutually agreed by the Parties, failing which to be appointed by the President of the Singapore International Arbitration Centre in accordance with the SIAC Rules. The language of the arbitration shall be English and the seat of arbitration shall be Singapore. This arbitration agreement shall be governed by the laws of Singapore.

20.3 Notwithstanding the preceding Clause 20.2, any Party may at any time without regard to any notice periods required, and as often as is necessary or appropriate, seek interlocutory, provisional or interim relief or remedies from any court (including, without limitation, to the extent available under applicable law, a temporary restraining order or preliminary injunction).

21 COMMUNICATIONS

21.1 All notice or other communications required or given under this Contract shall be in writing and may be delivered:

21.1.1 personally;

21.1.2 by prepaid registered post with recorded delivery to the address of the relevant Party listed at the beginning of this Contract (as relevant); or

21.1.3 by email.

21.2 Any alteration to such details shall be notified to the other Party in accordance with this Clause but shall not take effect until five days after the notice of the alteration has been given.

21.3 Any such notice or other communication shall be deemed to have been duly served or given (if delivered personally or given or made by email) immediately or (if given or made by post) three (3) business days after posting and in proving the same it shall be sufficient to show that personal delivery was made or that the envelope containing such notice was properly addressed, and duly stamped and posted or that no notification was received that the email failed to be delivered or delivery was delayed to the recipient.

22 ENTIRE AGREEMENT

22.1 This Contract is the entire agreement between the APEC Secretariat and the Contractor in relation to the matters set out in this Contract. No other terms and conditions may be included or implied. Any

warranty, representation, guarantee or other term or condition not contained in this Contract has no effect.

23 ILLEGALITY AND SEVERABILITY

23.1 If any provisions of this Contract are held unenforceable or invalid for any reason, the remaining provisions of this Contract will continue to be in full force and effect.

24 WAIVER

24.1 A Party's failure, delay or relaxation in exercising any power or right it has under this Contract does not mean that the Party has given up (i.e. waived) that power or right.

24.2 A Party exercising a power or right does not stop it from:

24.2.1 further exercising that power or right; or

24.2.2 exercising any other power or right under this Contract.

25 REASONABLENESS

25.1 The Contractor confirms it has had the opportunity to receive independent legal advice relating to all the matters relating to this Contract.

25.2 The Contractor agrees that, having considered the terms of this Contract as a whole, the terms of this Contract are fair and reasonable.

26 CONTRACT FOR SERVICES

26.1 Nothing in this Contract shall create or constitute the relationship of a partnership, or employer and employee, or agent or joint venture between the APEC Secretariat and the Contractor.

26.2 This Contract constitutes a contract for services between the APEC Secretariat and the Contractor. Unless otherwise agreed in writing by the APEC Secretariat and the Contractor, this Contract shall govern each and every assignment or project undertaken by or on behalf of the Contractor for the APEC Secretariat.

27 FORCE MAJEURE

27.1 A "**Force Majeure Event**" is any event which is beyond the reasonable control of the Contractor or the APEC Secretariat and which makes it impossible to perform an obligation under this Contract, including (but not limited to) the following:

27.1.1 acts of God, lightning strikes, earthquakes, volcano eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;

27.1.2 acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;

27.1.3 acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, military usurped power, intervention of any government authority, or civil war; or

27.1.4 contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

27.2 A Party that fails to perform an obligation under this Contract shall not be liable for such failure to the extent that a Force Majeure Event caused the non-performance, provided that the Party ("**Affected Party**") suffering such delay or Force Majeure Event immediately notifies the other Party of the same.

27.3 Where an Affected Party thinks there is likely to be a delay in performing an obligation under this Contract due to a Force Majeure Event the Affected Party shall:

27.3.1 immediately notify the other Party in writing of:

27.3.1.1 the likely delay and how long the Affected Party thinks it will last; and

- 27.3.1.2 where the Affected Party is the Contractor, details of the likely effect on the Services and the Contractor's ability to perform the Contract;
 - 27.3.2 take all reasonable steps to lessen (i.e. mitigate) the effects of any delay; and
 - 27.3.3 use its best efforts to continue to perform its obligations under the Contract.
- 27.4 The APEC Secretariat and the Contractor shall, as soon as practicable after receiving the notice under Clause 27.3, discuss whether the Contract can continue. If, following that discussion, the APEC Secretariat and the Contractor agree that the Contract can continue they may:
- 27.4.1 continue the Contract unchanged; or
 - 27.4.2 change the Contract using the process in Clause 8.
- 27.5 During the period that performance by the Affected Party of the whole or part of any obligation under this Contract or any transaction contemplated under this Contract has been suspended by reason of any Force Majeure Event, the other Party likewise may suspend the performance of the whole or part of its obligations under this Contract to the extent that such suspension is commercially reasonable, save for outstanding debts due and payable under this Contract.
- 27.6 If the Affected Party's performance of this Contract is suspended due to any Force Majeure Event for a period in excess of ninety (90) consecutive days from the date that notice of the Force Majeure Event is given, and so long as such Force Majeure Event is continuing, APEC Secretariat may, in its sole discretion, terminate this Contract and any affected orders by giving a written Notice of Termination to the Contractor after the end of the said ninety days' period, and such termination shall take immediate effect and Clause 17 (excluding Clause 17.1) shall apply to such termination.
- 27.7 Nothing in this clause limits the APEC Secretariat's ability to suspend or terminate the Contract under Clause 16 or Clause 17.

28 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT - SINGAPORE

- 28.1 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act Chapter 53B and/or any re-enactment thereof to enforce any terms of this Contract.

29 COSTS AND EXPENSES FOR PREPARATION AND EXECUTION OF CONTRACT

- 29.1 Except as otherwise provided for in the Contract, the Parties shall bear their own costs of and incidental to the preparation and execution (i.e. signing) of the Contract.

30 PROVISION OF SERVICES

- 30.1 The Contractor shall provide the Services to the APEC Secretariat on the Services Delivery Dates identified in the Special Conditions of the Contract. The Contractor shall immediately notify the APEC Secretariat in writing if the Contractor becomes aware that it will be unable to provide all or part of the Services by the relevant Services Delivery Date and advise the APEC Secretariat as to when it will be able to do so.
- 30.2 The Services must be provided to the standard that would be expected of an experienced and professional supplier of similar Services and any other standard specified in the Contract.
- 30.3 The Contractor and its staff or sub-contractors shall not by virtue of this Contract be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of the APEC Secretariat.

31 REPORTING AND COORDINATION ARRANGEMENTS

- 31.1 The Contractor shall liaise closely and work in collaboration with a Project Overseer in performing the Services in the Contract. The Contractor shall keep the Project Overseer informed of progress of the Services, timelines and budget. The Project Overseer shall be assigned by the APEC Member Economy which has requested this project.

32 AUTHORIZED REPRESENTATIVE

32.1 The APEC Secretariat may authorize representative(s) and/or a third party to instruct and provide clarification to the Contractor in performing the Services.

33 COUNTERPART

33.1 This Contract may be executed, by facsimile or other means of electronically imaging a signature, in any number of counterparts and by the Parties on separate counterparts, each of which shall constitute an original, and all counterparts shall together constitute one and the same instrument. Each Party agrees to be bound by its own fax or electronic signature and that it accepts the fax or electronic signature of the other Party. Delivery of an executed counterpart of a signature page to this Contract by email or facsimile or other electronic transmission, such as a PDF, shall be as valid and effective as delivery of an original executed counterpart of this Contract.