Appendix C

[Date]

HEAD OF AGENCY
Designation
Name of Agency
Agency's address

Re: Technical Assistance Agreement (*"TAA"*) for the Provision of [Scope of Services] for [Name of Project][1]

Dear _____:

1. This is to inform you that the Project Development and Monitoring Facility (*"PDMF"*) Committee, during its [date] meeting, approved the application for PDMF Support for the provision of [Scope of Services] for the [Name of Project] (*"Project"*), with an indicative budget of US$ [amount in words and figures], inclusive of taxes.

2. The amount approved by the PDMF Committee shall be earmarked for the Project upon the effectivity of this Technical Assistance Agreement ("*TAA*") by and between Public-Private Partnership (*"PPP")* Center and [Name of Agency ("*Agency*")].

3. The [agency/LGU] acknowledges that PDMF Support will be provided pursuant to the PDMF Guidelines, as may be amended, which is published in the website of the PPP Center (www.ppp.gov.ph). As such, the [Agency] agrees to strictly abide by the PDMF Guidelines and the terms and conditions of this TAA and its annexes.

Scope

4. The PPP Center and the [Agency] agree to engage PDMF-funded consulting services for the [Scope of Services] of the Project which is proposed to be implemented as a PPP project under Republic Act No. 6957, as amended by Republic Act No. 7718, (*the "BOT Law")* and its Implementing Rules and Regulations (*"IRR"*). The scope of the services to be rendered by the consultant (*"Consultant"*) shall be in accordance with the Terms of Reference (*"TOR"*) which shall be jointly drafted and agreed upon by the PPP Center and the [Agency]. The TOR, which will be annexed to the Contract for Consultant's Services ("CCS"), shall include, among others, the scope of work, team composition, the required deliverables, and the project milestones that will correspond to the payments.

5. The indicative scope of work and required experts are presented in **Annex A.** The services to be provided by the Consultant through the PDMF shall be exclusively for the

[1] Terms not otherwise defined herein shall have the meanings assigned to them under the PDMF Guidelines.

[Scope of Services] for the Project and shall not be used, assigned or redirected to support any other project.

6. Any change or variation in the scope of work of the Consultant shall be subject to the terms of the CCS, the endorsement of the PSC/PMC/PIC, and the approval of the PPP Center's Executive Director and/or the PDMF Committee, as may be applicable, pursuant to the PDMF Guidelines. The [Agency] understands that any change or variation, or any extension in the period for the provision of services by the Consultant shall be subject to negotiation with the Consultant and may have cost implications.

Consultant Selection

7. The selection of the Consultant shall be conducted in accordance with the Asian Development Bank's ("ADB") Guidelines on the Use of Consultants *(March 2013, as amended from time to time)*. The PPP Center shall create an inter-agency Special Bids and Awards Committee (*"SBAC"*) and a Technical Working Group (*"TWG"*) to undertake the consultant selection.

8. The terms of the provision of services by the Consultant shall be governed by the CCS which shall be entered into by the PPP Center with the selected Consultant. Upon indicating its conformity with the CCS, the [Agency] shall be bound to observe all the terms and conditions of the said contract.

Obligations of the [Agency]

9. The [Agency] shall nominate representatives (one [1] principal and one [1] alternate) to perform the following duties:

a. represent [Agency] in the SBAC for the selection of Consultants; and
b. represent [Agency] in the PSC/PMC/PIC.

The [Agency] warrants that each of the nominated representatives has full power and authority to sign, execute and deliver any and all relevant documents.

10. The [Agency] shall nominate a separate representative to the TWG to assist the SBAC in the evaluation of proposals of Consultants.

11. The obligations of the [Agency] shall include, but not be limited to, those enumerated in the attached **Annex C**. In addition, the [Agency] commits to observe recognized best practices for PPP projects (a summary of which is provided in **Annex D**); and all Policy Circulars issued by the PPP Governing Board, regardless of the date of issuance.

12. The [Agency] shall, to the extent possible, follow the project timeline. If, at the determination of the PPP Center, there is an unreasonable delay at any stage or phase of the Project, due to the fault of the [Agency], the PPP Center, at its sole discretion, may suspend or terminate this TAA. Any associated costs or penalties shall be for the account of the [Agency].

Payment of Consultant's Claims

13. The payment of Consultant's claims shall be pursuant to the PDMF Guidelines, the Output Evaluation Process as provided in **Annex B**, and the terms of the CCS.

Payment of Consultant's Final Claim

14. In case of termination or expiration of the CCS, the PPP Center shall advise the Consultant to submit its final claim, if any. Within sixty (60) calendar days from submission by the Consultant of the final claim, the [Agency] shall review the same for completeness and acceptability in accordance with the CCS. The [Agency] shall review the acceptability based on the methodology for the evaluation of claims and pursuant to the procedure as presented in **Annex E**.

15. Any disagreement on the assessment between the PPP Center and the [Agency] shall be resolved under the Dispute Resolution clause in this agreement.

Reimbursement

16. The [Agency] shall pay the Recoverable Amount in accordance with the provisions of the PDMF Guidelines.

17. A Financial Management Framework for the engagement of Independent Consultant is presented in **Annex F.**

18. Should the [Agency] decide to pre-terminate this TAA or the CCS, the [Agency] shall be solely liable for all attendant costs and fees necessary to effect the pre-termination of this TAA and/or the CCS, including any Consultant's fees that may be due and demandable for services already performed. The reimbursement of the actual cost of PDMF Support plus the Cost Recovery Fee by the [Agency], in the cases provided in the PDMF Guidelines, may be sourced from its annual budget, through the budgetary process, or through corporate funds, subject to existing laws, rules and regulations.

Dispute Resolution

19. In any of the dispute arising from this TAA, the PPP Center and the [Agency] agree to meet and immediately resolve such dispute through their authorized representatives. If the designated authorized representatives fail to resolve the dispute, the Head of the [Agency] and the Executive Director of the PPP Center shall meet to resolve the dispute, and any written joint resolution signed thereof shall be final and binding upon the PPP Center and the [Agency]. For any dispute that remains unresolved after thirty (30) days from the date of their last meeting, the existing laws, implementing rules and regulations, and subsequent amendments thereto, on the administrative settlement or adjudication of disputes between or among government offices, agencies, and instrumentalities, shall apply.

Effectivity

20. This TAA shall become effective on the date of our receipt of the same, duly signed by [Name of Head of Agency] and shall subsist until the Recoverable Amount has been fully repaid or reimbursed, in accordance with the PDMF Guidelines, to the PPP Center.

21. Failure of the [Agency] to abide by the terms of and comply with its obligations under this TAA and its Annexes shall entitle the PPP Center to terminate or suspend the CCS. Any attendant costs for such termination or suspension shall be for the account of the [Agency].

22. Should you agree to the terms and conditions of this TAA, including its Annexes, and provided you are authorized to enter into this TAA, kindly indicate your acceptance and conformity by affixing your signature in the space provided below and returning this document to us.

Very truly yours,

_____
Undersecretary and Executive Director
PPP Center

Conforme:

The [Name of Agency] accepts and agrees with all the terms of this TAA and its Annexes.

_____
HEAD OF AGENCY
Designation
Name of Agency

Annex A
INDICATIVE SCOPE OF WORKS AND REQUIRED EXPERTS

Sample Draft: For Probity Advisory

Indicative Scope of Assignment

1. The Consultant shall observe, scrutinize, and provide independent assessment regarding the whole PPP bid process. In addition, the Consultant should identify and address possible risks or potential conflicts of interest (COI) observed during the bidding phase, in accordance with the project-specific Probity Plan and immediately propose appropriate resolutions to the concerned [Agency].

2. The scope of work for the project shall consist of three (3) phases:

   (a) Phase 1 – Preparation of Probity Plan, Review and Input on Bid Strategy, and Briefing on Recommended Protocols, Roles, and Structure of Bid Process;
   (b) Phase 2 – Advisory during Pre-qualification (PQ) Process; and
   (c) Phase 3 – Advisory on Preparation and Finalization of Bid Documents; and Technical and Financial Proposal Evaluation.

3. The indicative detailed tasks for each phase are described below:

   Phase 1: Preparation of Probity Plan, Review and Input on Bid Strategy, and Briefing on Recommended Protocols, Roles, and Structure of Bid Process

   Tasks:
   (a) Familiarization of the team on the following aspects of the bid process: i) nature of the project, ii) bid documents, iii) selection process in accordance with the BOT Law, and iv) other related documents as deemed necessary;
   (b) Preparation of a comprehensive project-specific Probity Plan, including the following: i) framework that will reflect the processes and procedures required to mitigate any probity risks in accordance with probity principles, and ii) monitoring and documentation tool; and
   (c) Presentation and briefing outlining the protocols, roles, structures, and applicable probity requirements for the Project as prescribed in the Probity Plan to [Agency], PPP Center, and Pre-qualifications, Bids, and Awards Committee (PBAC).

   Phase 2: Advisory during PQ Process

   Tasks:
   (a) Review of pre-qualification documents (including but not limited to the Invitation to Pre-qualify and Bid, Instructions to Prospective Bidders (ITPB), and PQ Criteria) from a probity perspective; and provide advice if necessary;
   (b) Attendance in meetings and participation in discussions related to bidders' queries, if necessary;
   (c) Review of PQ results/recommendations from a probity perspective and provide advice if necessary;
   (d) Review of [Agency]'s responses to queries of bidders and other concerned parties;
   (e) Review of [Agency]'s letters issued to pre-qualified bidders, as well as notifications issued to bidders that were not pre-qualified;

(f) Review of briefing documents in the debriefing of unsuccessful bidders and participation on the same;
(g) Preparation of Probity Report which shall include: (i) observations made during the PQ phase, including any probity issues that arose, and how those issues were managed, (ii) an assessment of the [Agency]'s performance and management of the probity issues encountered, and (iii) Probity Training Design to indicate, among others, lessons learned and experiences encountered on risk and COI management; and
(h) Conduct of probity-related training or knowledge sharing to staff of [Agency], PPP Center, and relevant Government staff.

Phase 3: Advisory on Preparation and Finalization of Bid Documents, and Technical and Financial Proposal Evaluation

Tasks:
(a) Review of bid documents (including the Instructions to Bidders (ITB), PPP agreement, Information Memorandum, Minimum Performance Standards and Specifications (MPSS), Bid Bulletins, Bid Evaluation Criteria, and Bid Forms) from a probity perspective; and provide advice, if necessary;
(b) Review of materials prepared by the [Agency]/PPP Center/Transaction Advisor for Investor Briefings, One-on-One Sessions, and Bid Conferences;
(c) Attendance in meetings and participation in discussions related to bidders' queries, if necessary;
(d) In compliance with the Probity Plan, ensure that the process is impartial and fair to all bidders, with no bidder given an advantage over another or unfairly discriminated against;
(e) Review of bidding results/recommendations from a probity perspective and provide advice, if necessary;
(f) Review of discussion documents/materials for the conduct of debriefing of unsuccessful bidders, and participation on the said debriefing;
(g) Preparation of and sign-off on Probity Report which shall include: (i) observations made during the bid process phase, including any probity issues that arose and how those issues were managed, (ii) an assessment of the [Agency]'s performance and management of the probity issues encountered, and (iii) Probity Training Design to indicate, among others, lessons learned and experiences encountered on risk and COI management; and
(h) Conduct of probity-related training or knowledge sharing to staff of [Agency], PPP Center, and relevant Government staff.

Required Experts

(a) One (1) Probity Advisor (PA)
Five (5) years demonstrated experience in providing procurement/probity advisory services for large infrastructure projects using a PPP structure, including extensive experience in bid process monitoring and bid evaluation and risk and COI management of government infrastructure projects. Engaged as PA for five (5) concluded PPP assignments.

(b) One (1) Legal Specialist
Five (5) years of demonstrated experience in preparing PPP agreements, and other related documents/agreements; managing bidding process; and resolving legal/policy/ institutional assessment issues during bidding process and contract award. Engaged as legal specialist for three (3) PPP transaction advisory assignments.

Annex B
OUTPUT EVALUATION PROCESS

1. The Agency (and the Private Proponent, in case of independent consultant services) shall inform the PPP Center of its authorized representative/s for the purposes of this Output Evaluation Process.

2. Upon submission of output by the Consultant, the authorized representatives from the Agency (and the Private Proponent, in case of independent consultant services) and PPP Center will simultaneously review the output. The PPP Center, through its authorized representative, shall provide its recommendation to the Agency (and the Private Proponent, in case of independent consultant services) within a mutually agreed time.

3. Within twenty (20) working days (or an earlier period as may be mutually agreed upon) from receipt of the PPP Center's recommendation, the Agency (and the Private Proponent, in case of independent consultant services) shall complete its review of the output and inform the PPP Center of its decision whether to accept or require revision of the output or portions of it.

   (a) In case of acceptance, the authorized representative from the Agency (and the Private Proponent, in case of independent consultant services) shall certify acceptance of the output and submit the same to PSC/PMC/PIC and the PPP Center. The PSC/PMC/PIC shall review such acceptance and recommend to the PPP Center's Executive Director the appropriate action. The PPP Center's Executive Director or his duly authorized representative shall have the final decision on the evaluation of the output and payment of claims and any other actions or remedies that can be exercised under the CCS. In case of approval of the payment, the PPP Center will then notify the Consultant of the output's acceptance and advise the Consultant to submit its corresponding claim for payment.

   (b) In case of the need to revise, the authorized representative from the Agency (and the Private Proponent, in case of independent consultant services) shall inform the PPP Center of such decision in writing. The PPP Center shall relay such decision to the Consultant, and the following steps shall be undertaken:

Activity	Timeframe	Responsible Entity
a. Prepare and agree on the workplan on how to address Agency's (and the Private Proponent, in case of independent consultant services) issue(s)/concern(s) on the output or portions thereof.	Within five (5) working days (or an earlier period as may be mutually agreed upon) from the issuance of the notification of output rejection	Consultant and Agency's (and the Private Proponent, in case of independent consultant services) authorized representative
b. Revise the output, or portions thereof, as per agreed workplan.	Within the period as specified in the workplan agreed upon by Agency (and the Private Proponent, in case of independent consultant services) and the Consultant	Consultant

i. If the Consultant is able to revise the outputs within the period agreed in the workplan, but the Agency (and the Private Proponent, in case of independent consultant services) still finds the output unacceptable, the above-mentioned steps/activities under this sub-item (b) shall be repeated at a maximum of three (3) rounds until the Agency (and the Private Proponent, in case of independent consultant services) accepts the output. On the third round (at a maximum), if the Agency (and the Private Proponent, in case of independent consultant services) still finds the output unacceptable, the same shall be elevated to the PSC/PMC/PIC, which shall then recommend to the PPP Center's Executive Director the appropriate action or remedy. The PPP Center's Executive Director or his duly authorized representative shall have the final decision on the evaluation of the output and payment of claims and any other actions or remedies that can be exercised under the CCS.

ii. In the event that the Consultant fails to revise or improve the output within the period agreed in the workplan after a maximum of three (3) rounds, the Agency (and the Private Proponent, in case of independent consultant services) has the option to grant a reasonable extension of the period to revise the outputs, or request the PPP Center to exercise its available remedies as Client under the CCS.

iii. Once the output is accepted, the Agency (and the Private Proponent, in case of independent consultant services) shall undertake the activity mentioned in sub-item 3(a) of this Annex.

4. If the Agency (and the Private Proponent, in case of independent consultant services) fails to inform the PPP Center of its decision whether to accept or require revision of the output within 20 working days (or an earlier period as may be mutually agreed upon) from receipt of the PPP Center's recommendation, the PPP Center shall notify and call on the PSC/PMC/PIC representative of the Agency (and the Private Proponent, in case of independent consultant services) to act on the matter. Within five (5) working days (or an earlier period as may be mutually agreed upon) from receipt of the notification, the PSC/PMC/PIC representative of the Agency (and the Private Proponent, in case of independent consultant services) and the PPP Center shall discuss the evaluation results. The PSC/PMC/PIC shall then recommend to the PPP Center's Executive Director the appropriate action. The PPP Center's Executive Director or his duly authorized representative shall have the final decision on the evaluation of the output and payment of claims and any other actions or remedies that can be exercised under the CCS.

5. In case of inaction by the PSC/PMC/PIC representative of the Agency (and the Private Proponent, in case of independent consultant services) in items (3) and (4) above, the PPP Center's Executive Director or his duly authorized representative shall have the final decision on the evaluation of the output and payment of claims and any other actions or remedies that can be exercised under the CCS.

Annex C
AGENCY OBLIGATIONS

The [Agency] shall have, among others, the following obligations:

A. Consultant Selection/Recruitment

1. Nominate representatives to the SBAC and the TWG, and the [PSC/PMC/PIC].
2. Ensure compliance with the seven (7) calendar days (from receipt of documents) turn-around time for the review/evaluation and approval of the documents for consultant selection.

B. Contract Implementation

1. Provide dedicated personnel with relevant skills as counterpart staff to the Consultant including a designated Project Manager to, among others–
    a. Work closely and coordinate with the assigned Project Officer of the PPP Center and the Team Leader;
    b. Ensure the relevant principal/s of the [Agency] is well-informed of the developments of the project;
    c. Ensure that prerequisite activities/requirements to move the project forward are undertaken;
    d. Provide other administrative assistance such as, but not limited to, arranging/coordinating meetings, and reproduction of project documents for internal government use/requirement.
2. Create a Prequalification, Bids and Awards Committee ("PBAC") pursuant to the BOT Law and its IRR.
3. Ensure compliance with the BOT Law and its IRR, and with other relevant laws, rules, regulations, circulars or other issuances by any government authority, at all stages or phases of the project.
4. Ensure compliance with the required turn-around time for the review/evaluation and approval of the deliverables/outputs of the Consultant, including review/evaluation and acceptance of the associated tasks and/or special reports linked to said deliverables/outputs.
5. Issue prompt endorsement or approval of the Consultant's claims for payments (whether milestone payments, final claims, or reimbursable expenditures), when required by the PPP Center, pursuant to the PDMF Guidelines and the Output Evaluation Process (Annex B).
6. Keep track of the deployment of the Consultant's personnel and ensure that their field work is aligned with the approved budget and work plan.
7. Provide office space/work station for the Consultant.
8. Liaise with other government agencies, LGUs, and private organizations, as need arises, to ensure that the Consultant has access to all data/information required, as may be allowed under Philippine laws.
9. Prepare and make presentations, as may be necessary, to PBAC, stakeholders, and other relevant government approving bodies.
10. Prepare (i) minutes/highlights of all meetings, including TWG, SBAC and Board Meetings (except for meetings involving other stakeholders, PQ conferences, market sounding, one-on-ones, etc.), (ii) all presentation materials, and (iii) responses to queries (other than queries from bidders/proponents during the bidding process) from stakeholders.
11. Ensure that instructions or requests to the Consultant are in compliance with the scope of works outlined in the TOR.

12. Coordinate with relevant approving bodies regarding meeting schedules, submissions and other requirements.
13. Coordinate and consult with the PPP Center and the Consultant regarding any documents to be made publicly available.
14. Ensure availability of internal resources for bid stage activities and events (e.g., advertisement/s, pre-bid conferences)
15. Ensure inclusion in the bid documents the requirement on the winning bidder to pay the Recoverable Amount to the PDMF as a condition for contract signing and the release of the bid security.
16. Submit to the PPP Center an executed copy of the project agreement, and any amendments thereto, signed with the winning bidder within thirty (30) days from execution thereof.
17. Submit to the PPP Center periodic reports on the implementation of the Project, as requested by the PPP Center.
18. Pay the Recoverable Amount to the PDMF in accordance with this TAA and the PDMF Guidelines.

Annex D
PPP BEST PRACTICES

1. Conduct of market sounding

   Market sounding is the process by which the private sector's ability to assume risks through the PPP contract is assessed. The activity focuses on the appropriateness and attractiveness of the PPP scheme, and soliciting inputs and requirements from prospective bidders. Market sounding could either occur during the preparation of the project, before the issuance of the request for proposals or request for submission of qualification documents. In particular, it occurs before the bidding proper or before sending out invitations to prospective bidders.

2. Conduct of one-on-one meetings

   This is held for prequalified bidders. One-on-one meetings are conducted to clarify any of the bidders' questions, comments, and concerns; and discuss key terms and conditions of the draft PPP agreement.

3. Use of Control Test

   The Control Test provides a practical and efficient approach in determining compliance to the nationality requirement for projects to be implemented under a contractual arrangement which requires public utility franchise for its operation.

4. Use of Virtual Data Room (VDR)

   This is designed as a secure and controlled online facility for storing, accessing, and distributing bid documents and project-related data. The VDR provides a platform for prequalified bidders to undertake their due diligence review on a PPP project.

5. Appointment of Probity Advisor[2]

   Probity Advisors provide an independent opinion on probity issues that may arise during the project tender process, and confirm that the concluded bid process meets probity requirements.

6. Independent Consultant/Engineer

   Independent Consultants/Engineers provide technical expertise on, unbiased monitoring of, and assurance that the facility complies with the detailed engineering

[2]Applicable to: (a) large PPP projects with cost amounting to PhP 20 billion or more, or as maybe determined by the PPP Governing Board, and (b) complex projects, regardless of amount, as determined and justified by the [agency/LGU].

design and minimum performance standards and specifications identified in the PPP contract.

7. Conflict Management Plan

The submission of a conflict management plan shall be required from the consulting firms who act as professional advisors of two or more bidders in the same project, in order to ensure that no conflict of interest exists between and among the teams within the said firm. The plan shall contain, among others, an integrity pledge and a disclosure of all the firm's clients that are participating in a particular PPP project.

Note: Nothing in this Summary shall supersede or amend the policy circulars issued by the PPP Governing Board. In case of any inconsistency between this summary and the language of the PPP Governing Board's policy circulars, the latter shall prevail.

Annex E
METHODOLOGY ON THE ASSESSMENT OF FINAL CLAIM OF THE CONSULTANT

I. GENERAL POLICY

A. Evaluation of final claim shall be covered by this methodology.

B. The PSC/PMC/PIC shall determine the validity and reasonableness of claims. The procedure in the Output Evaluation Process (Annex B), as may be applicable, shall apply.

II. ASSESSMENT

A. Eligibility

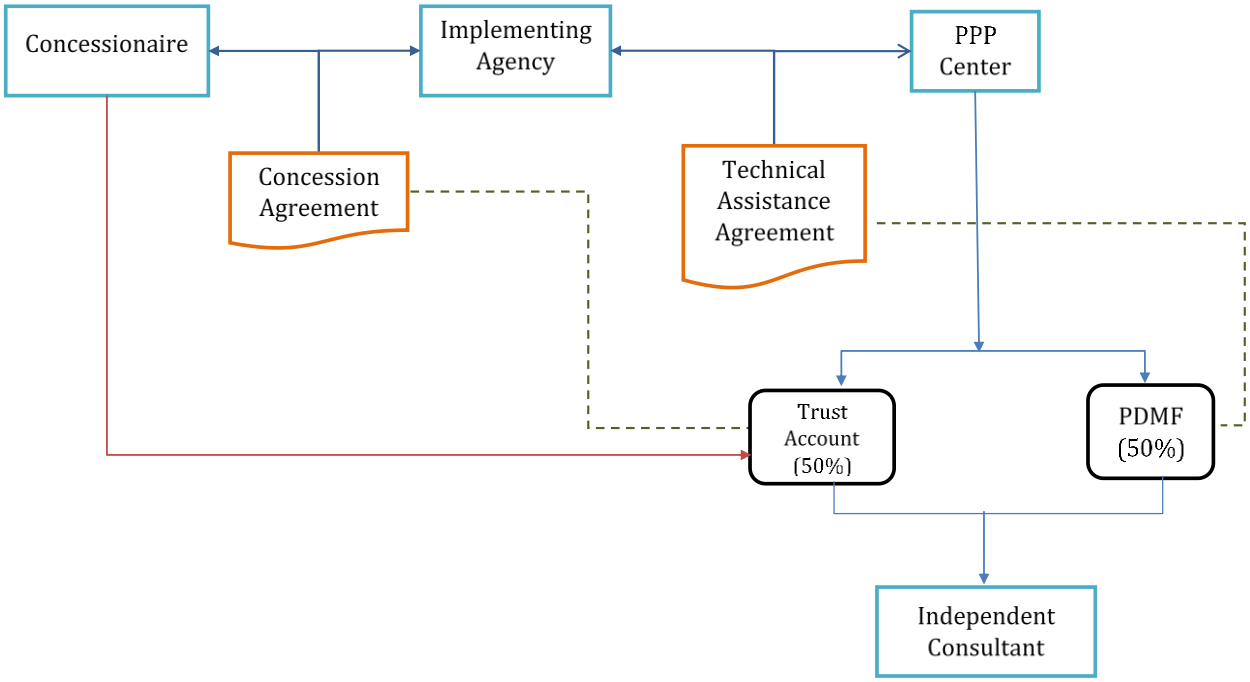
1. Payment may be made for all services/activities and outputs (and associated out-of-pocket expenses) included or necessarily included in the Terms of Reference (TOR) in the Contract for Consultant's Services (CCS) and its amendments, if any.

B. Evaluation Parameters

2. The total value of the claim will be based on the terms specified in the CCS.

3. One input-month is equivalent to 22 working (billable) days. Further, one working (billable) day should be equivalent to eight (8) working (billable) hours.

4. Only key and non-key experts as indicated in the CCS will be compensated. Rates of experts, based on the latest contract amendment, if any, shall not be modified.

Annex F

FINANCIAL MANAGEMENT FRAMEWORK FOR THE ENGAGEMENT OF INDEPENDENT CONSULTANTS