

Agreement on Transaction Advisory Services for the Procurement of the Philippines Automated Fare Collection System Project

Overview

1. This Agreement on Transaction Advisory Services for the Procurement of the Philippines Automated Fare Collection System Project ("**PAFCS**" or the "**Project**"), dated August 1, 2024 (the "**Agreement**"), is entered into between the Republic of the Philippines represented by the Secretary of the Department of Transportation ("**DOTr**") and the Executive Director of the Public-Private Partnership Center ("**PPPC**"), collectively referred to as "**Clients**" and individually as a "**Client**", and the Asian Development Bank ("**ADB**") through the ADB's Office of Markets Development and Public Private Partnership ("**OMDP**").
2. The Project consists of the development, operations, and maintenance of the automatic fare collection system for all transport modes in the Philippines and shall comply with the cashless, multimodal, open, and interoperable objectives of the Philippine AFCS National Standards ("**National Standard**").
3. The DOTr has requested that ADB acts as its transaction advisor ("**Transaction Advisor**") in relation to the preparation, structuring, and procurement of the concessionaire for the Project. The DOTr has applied and was granted funding support from the Project Development and Monitoring Facility ("**PDMF**") which is managed and administered by the PPPC. The Clients will procure ADB's services under the relevant procurement laws of the Republic of the Philippines.
4. The Clients represent and warrant for the benefit of ADB that:
 - a. the engagement of ADB as Transaction Advisor on a negotiated procurement basis under this Agreement is fully compliant with all applicable laws of the Republic of the Philippines; and
 - b. the DOTr has the requisite power and authority to procure the concessionaire for the Project and has obtained or will obtain all such approvals and consents as may be required to procure the concessionaire.

Term

5. The term of ADB's appointment as Transaction Advisor under this Agreement ("**Term**") shall take effect from the date indicated in the Notice to Proceed to be issued by the PPPC (the "**Start Date**") and shall continue until the earlier of:
 - (a) Twenty-four (24) months from the Start Date (or such later date, and subject to terms and conditions, as may be agreed between the parties in writing); and
 - (b) the date on which the DOTr has fully completed its procurement process for the Project (including the selection of the winning bidder¹ for the Project, the entering into by the winning bidder and the DOTr of the PAFCS Concession Agreement in relation to the Project (the "**PAFCS Concession Agreement**"), and the achievement of Financial Close for the Project ("**Financial Close**") by the winning bidder.

¹ For the purpose of this Agreement, the term "winning bidder" means the winning bidder, the relevant private partner (in case a new special purpose vehicle (SPV) is formed to enter into the definitive legal agreements in relation to the Project), or a parent company of any one or more members of the consortium (in case the winning bidder is a consortium), as the case may be.

subject to earlier termination in accordance with Clauses 18 or 19.

Appointment and Services

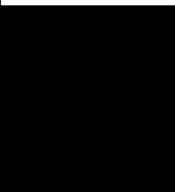
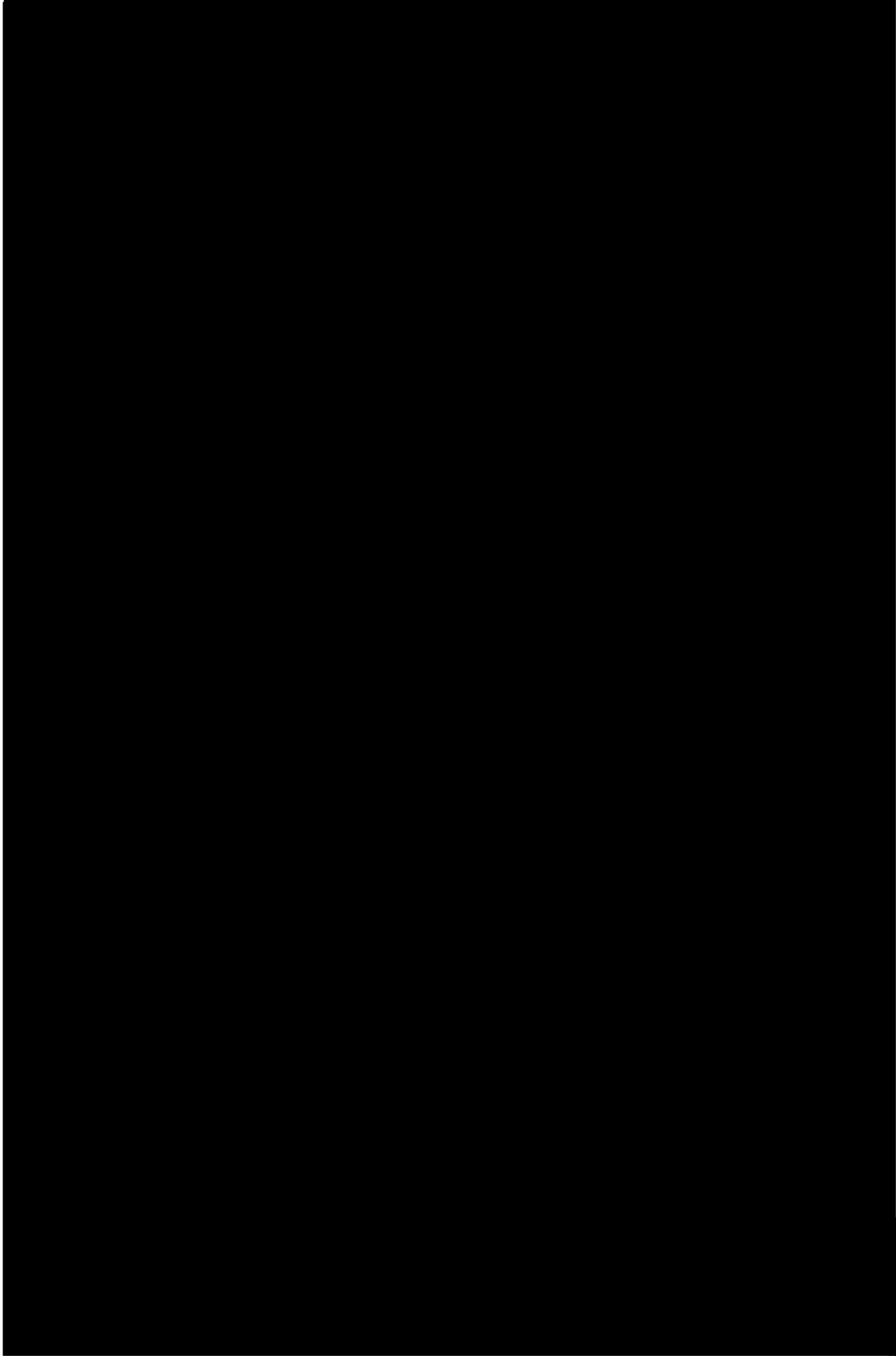
6. By countersigning this Agreement, the Clients appoint ADB as their sole Transaction Advisor in relation to the Project and grant to ADB the exclusive right to perform the Services (as defined in Clause 7 below) for the duration of the Term.
7. During the Term, ADB will provide the services in relation to the Project set out in Schedule 1 to this Agreement (the "**Services**") to the Clients, all in accordance with the provisions of this Agreement.
8. The Clients expressly acknowledge and agree that:
 - (a) ADB may engage and dismiss such external consultants or service providers (together "**TAS Consultants**") in respect of the performance of the Services as ADB may in its sole and absolute discretion deem necessary or desirable in carrying out the terms of this Agreement, provided the Clients are given prior notification and the Clients do not raise any objection. Upon ADB's engagement of TAS Consultants, ADB shall submit to the PPPC the names and the Terms of Reference of each of the TAS Consultants;
 - (b) the TAS Consultants shall owe a duty of care primarily to ADB;
 - (c) The Clients may apply, and ADB shall assist the Client with such application, for technical assistance ("**TA**") support from the Asia Pacific Project Preparation Facility ("**AP3F**") or ADB may secure other available TA funds as ADB deems necessary in relation to the Services; and
 - (d) the Clients shall instruct their advisors ("**Advisors**"), if any, to work collaboratively with ADB and the TAS Consultants so that ADB may manage and coordinate the inputs of the Advisors in relation to the performance of the Services.

Financing

9. Departments of ADB (other than the OMDP) may independently consider financing all or any part of, or providing any other assistance to, the Project or the Client. While nothing in this Agreement shall be deemed to constitute or imply any commitment by ADB to finance all or any part of, or to provide any other assistance to, the Project or the Client or any other person, any decision by ADB to finance all or any part of, or to provide any other assistance to, the Project shall be contingent upon approval by the management and the board of directors of ADB and the execution of definitive legal documentation in form and substance satisfactory to ADB.

Fees and Payments

10.  



11. For the avoidance of doubt and notwithstanding Clause 10 (a) to (d) above, the DOTr



shall remain liable for all unpaid amounts (whole or in part) of Milestone Payment 4 and Milestone Payment 5 if unpaid by the winning bidder.

In the event that the PPPC, through the PDMF, is unable to pay ADB for the Milestone Payments 1, 2, 3 and 6, then DOTr shall make the payments to the ADB.

12. Subject to the terms and conditions of this Agreement, ADB shall invoice the PPPC, or the winning bidder (as the case may be) in respect of the Milestone Payments referred to in Clause 10, and the amount of each invoice shall become due and payable by the Client within sixty (60) days or the winning bidder within thirty (30) days (as the case may be) from the date of such invoice. All amounts payable by the Client or the winning bidder (as the case may be) to ADB under this Agreement shall be made in full when due, in USD in immediately available funds, without set-off, deduction or withholding (whether on account of tax, bank charges or otherwise), to such bank account as ADB may notify the Clients.

Clients Obligations

13. The Clients shall cooperate with ADB in relation to the Services and shall:
 - (a) provide, or facilitate the provision, to ADB of all information necessary or desirable for the performance of the Services in a timely manner; and
 - (b) without prejudice to the representation and warranty at Clause 4(b), obtain and maintain all permits, licenses, approvals, and consents as may be necessary or desirable for the Client to procure the PAFCS concessionaire and implement the Project;
 - (c) without prejudice to the Clients' undertakings under this Agreement, perform its obligations under this Agreement in accordance with all applicable Philippine laws and regulations governing budgeting, accounting, and auditing rules including in relation to the allocation, disbursement and administration of PDMF for this Project;
 - (d) ensure that PPPC shall manage and administer PDMF in relation to this Agreement in a manner consistent with all applicable Philippine laws and regulations governing budgeting, accounting, and auditing rules. Relatedly, DOTr shall enter into a Technical Assistance Agreement with the PPPC to effectively manage and administer the PDMF, and it shall follow the reimbursement process of the Recoverable Amount upon the termination of the Agreement with the PPP Center, subject to the conditions set forth in Section 9.4 and Annex C of the PDMF Guidelines dated October 2023 and Section 26 of Republic Act No. 11966 and its Implementing Rules and Regulations.
14. Save as expressly otherwise agreed:
 - (a) the Clients shall ensure that any and all advice, opinions and information provided by ADB (and its TAS Consultants) shall be kept strictly confidential provided that the Clients: (i) may disclose to the extent reasonably necessary the advice, opinions, and information provided to the Clients by ADB (and its TAS Consultants) to its directors, officers, and employees, or any other governmental entity having jurisdiction over the Project, or any of them, and (ii) shall use its best endeavors to ensure that the persons to whom disclosure is made keep the advice, opinions and information confidential on the same terms as are provided in this Clause 14;
 - (b) All documents or materials (such as, but not limited to all plans, drawings, specifications or designs, reports, and other documents) prepared by the Transaction

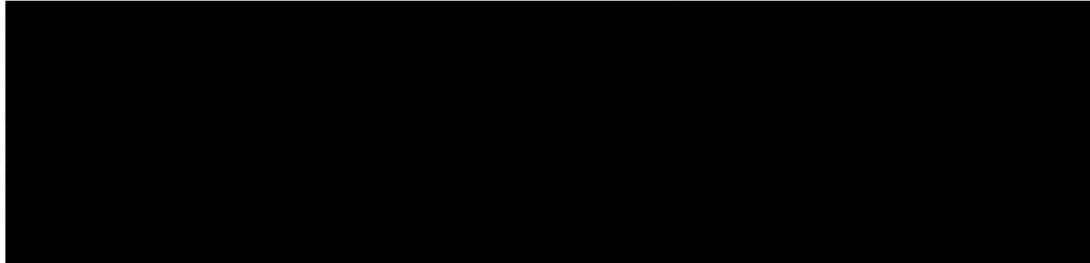
Advisor (ADB) or its TAS Consultants by virtue of this Agreement shall become and remain to be the property of the PPPC and DOTr;

- (c) Notwithstanding the foregoing, ADB or its TAS Consultants as applicable shall retain intellectual property rights in the advice, methodologies, programs documents, materials and other work products in used, and in the documents, materials and other work products produced as a result of Services; and
- (d) no person other than the Clients shall be entitled to rely on any advice or opinions provided by ADB (and its TAS Consultants).

Disclaimers

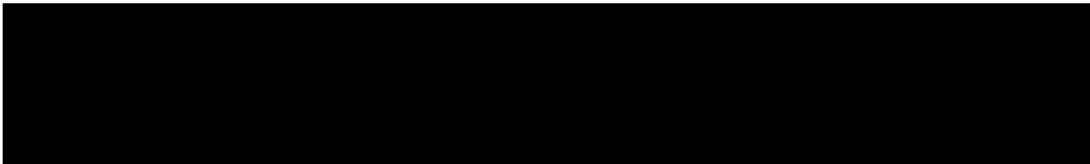
15. ADB will diligently perform the Services, but makes no express or implied representation, warranty or undertaking as to the extent of success that may be achieved in implementing any recommendation made by ADB or in preparing, structuring, procuring and implementing the Project.

16.



Termination

17.



18. The Clients or ADB may terminate the arrangements set out in this Agreement prior to the end of the Term by giving the other party not less than forty-five (45) days' prior written notice of its intention to terminate. The parties shall take all such steps as may be necessary or desirable to cause the activities relating to the Services to be brought to an orderly conclusion and any outstanding obligations to be settled within the period specified in the termination notice.

19. ADB may additionally terminate the arrangements set out in this Agreement with immediate effect upon giving written notice to the Clients if:

- (a) in ADB's reasonable opinion, any Clients' actions or inactions are likely to significantly delay any or all of the Project or otherwise cause the Project to be commercially unviable and/or unbankable;
- (b) any of the bid documents or the PAFCS Concession Agreement does not include a requirement for the winning bidder to pay to ADB the Milestone Payment 4 and Milestone Payment 5 as required under Clause 10;
- (c) pursuant to any investigation undertaken in accordance with Clause 28 and in ADB's sole discretion, ADB discovers any corrupt, fraudulent, collusive or coercive practice



relating to the Services or the Project; or

- (d) the winning bidder, or in the case of a winning bidder that is a consortium, any member of the consortium, is under temporary suspension or debarment by ADB pursuant to ADB's Anticorruption Policy (1998 and as amended), whether such debarment was directly imposed by ADB, or imposed by another entity and enforced by ADB in accordance with its policies.

20. Upon termination of this Agreement by the Clients pursuant to Clause 18 or by ADB pursuant to Clause 19(a), 19(b) or 19(c), the DOTr shall pay to ADB:

- (a) all costs incurred by ADB in providing the Services (including all costs relating to the engagement of TAS Consultants) over and above the costs reimbursed by the Client under Clause 10 up to and including the date of termination provided that ADB shall submit to the Client invoices substantiating such costs incurred by ADB, and the parties agree that such invoices will be sufficient as evidence of such costs and expenses incurred by ADB absent manifest error in any such invoices; and
- (b) any costs reimbursable to AP3F or any other form of technical assistance support incurred up to and including the date of the termination (including all costs relating to the engagement of TAS Consultants) but deducting any and all amounts received by ADB as payments for Milestone Payment 4 and Milestone Payment 5 up to and including such date of termination (but not, for the avoidance of doubt, any costs incurred solely in relation to capacity building and project definition activities undertaken under such AP3F application).

The Clients acknowledge and agree that they shall remain liable for the payment of the foregoing notwithstanding the unavailability or non-disbursement of, or failure to disburse for whatever reason, funds under PDMF, or non-approval of budget for DOTr.

21. Expiry or termination of this Agreement shall not affect any rights or obligations accrued prior to the date of termination. The provisions of Clauses 10, 11, 12, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, and 27 shall survive expiry or termination of this Agreement.

Governing Law and Dispute Resolution

- 22. This Agreement is governed by and shall be construed in accordance with English law.
- 23. If any dispute arises out of or in connection with this Agreement (including in relation to its existence, validity, breach, or termination) (a "**Dispute**"), the parties shall first meet and endeavor to resolve the Dispute amicably and in good faith. If the parties are unable to resolve the dispute by negotiation, either party may refer the Dispute by notice to arbitration in accordance with Clause 24.
- 24. Subject to Clause 23, any Dispute shall be finally resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") in effect at the time of the arbitration is commenced, except as they are modified by the provisions of this Agreement. The seat of the arbitration shall be Singapore, and the arbitration shall be conducted in the English language. The arbitration shall be conducted by one arbitrator and the arbitration award shall be final and binding.
- 25. Nothing in this Agreement, or any submission to arbitration by ADB or any provision of the SIAC Rules, shall constitute or imply (or be deemed to constitute or imply) a waiver, renunciation, abrogation, termination or modification by ADB of any privilege, immunity or exemption to which ADB is or may be entitled under the Agreement Establishing the

Asian Development Bank, any international convention, any memorandum of understanding or any applicable law, and all such privileges, immunities and exemptions shall apply in full.

Notices and Communication

26. Any notice or communication given or made by the Client(s) to ADB and vice versa will be in writing and sent by mail or email. Except as otherwise specified herein, any notice or communication to any of the Clients or to ADB is to be addressed to it as set forth below, or to such other address or email address as may be specified by the parties from time to time. Unless otherwise specified herein, notices will be effective when received.

DOTr

Name: Atty. Timothy John R. Batan
Title: Undersecretary for Planning & Project Development
Address: Edsa, corner Connecticut, San Juan, 1503 Metro Manila
Email Address: tr.batan@dotr.gov.ph/tjbatan.dotr@gmail.com

PPPC

Name: Ma. Cynthia Hernandez
Title: Undersecretary
Address: 8th Floor, One Cyberpod Centris, EDSA cor. Quezon Avenue,
Brgy. Pinyahan, Quezon City 1100, Philippines
Email Address: mchernandez@ppp.gov.ph

ADB:

Name: Dionisio Camangon
Title: Senior Markets Development Advisory Specialist
Address: 6 ADB Avenue, Mandaluyong City 1550, Metro Manila, Philippines
Email Address: dcamangon@adb.org


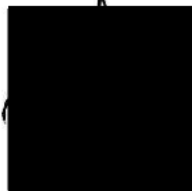
Use of ADB name

27. The Clients agree not to use, or permit the use of, ADB's name, trademark or logo in any advertisements, promotional literature or information, signage, marketing materials, brochures, press releases or any other similar public materials in any medium whatsoever, without the prior written consent of ADB in each instance.

ADB Policies

28. The Clients acknowledge and agree that ADB, in compliance with ADB's Anticorruption Policy (1998) (as may be amended from time to time), has the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Services or the Project, and the Client shall cooperate, and (if and to the extent applicable) use its best endeavors to procure that any supplier, consultant, or other service provider, as they relate to the Services or the Project, cooperate, with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

Entire Agreement

29. This Agreement constitutes the Clients' and ADB's entire agreement in relation to its subject matter and supersedes all prior negotiations, understandings and communications in relation thereto.
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**Agreed for and on behalf of the
Government of the Republic of Philippines**


JAIME J. BAUTISTA
Secretary, Department of Transportation


MA. CYNTHIA C. HERNANDEZ
Executive Director, Public-Private Partnership Center


Agreed for and on behalf of the Asian Development Bank



F. CLEO KAWAWAKI
Head of Office, OMDP
Asian Development Bank

WITNESSES


ELEAZER R. RICOTE
Deputy Executive Director, PPP Center


TIMOTHY JOHN R. BATAN
Undersecretary for Planning and Project
Development, DOTr


WINFRIED F. WICKLEIN
Director General Southeast Asia
Department, ADB


REINIER PAUL R. YEBRA
Undersecretary for Legal Affairs, DOTr


**JESUS NATHANIEL MARTIN B.
GONZALES**
Undersecretary for Administration and
Finance, DOTr

**SCHEDULE 1
SCOPE OF SERVICES**

**Transaction Advisory Services ("TAS") for the Procurement of the
Philippines Automated Fare Collection System Project**

	Scope of Work	Deliverable
Milestone 1: Kick-Off Meeting		
1.1	Conduct a team Kick-Off Meeting among all parties, to agree on the project implementation plan, milestones, timelines and resourcing.	Kick-Off Meeting Terms of Reference of TAS Consultants (for information only) Workplan for Planning and Deliverables Milestone Payment 1: receipt of Minutes of Kick-off Meeting
1.2.	Transition of Outgoing AFCS Concession To the extent required, provide input and support to the DOTr relating to the transition of the outgoing AFCS Concession, to ensure a seamless transition and continuity of service to the new AFCS concession. For avoidance of doubt, such scope shall not include direct negotiation with the Outgoing AFCS Concessionaire.	
Milestone 2: Project Preparation to NEDA Board Approval		
2.1	Review all existing studies, reports, designs, and other materials relevant to the Project and present recommendations based on findings in the review of said materials relevant to the Project. To the extent required, assist the DOTr in developing the PAFCS National Standards to support the government's objectives to cover all public transportation modes, including for toll-road payments. To the extent required, provide input to the development of the Fleet Management System National Standards to inform policy decisions and implementation plans regarding possible integration with the AFCS on-board devices.	Project Information Memorandum Market Sounding Report
2.2	Conduct Market Sounding with all relevant, qualified, and experienced AFCS operators. The market sounding will identify market players' concerns and key issues with regard to participation in the tender for the PAFCS Concession Agreement and advise DOTr in evaluating how to address identified concerns, to realize optimal value and risk allocation for DOTr and realizing an optimal level of competition. Organize Roadshows for the Project to sufficiently create awareness and interest in the Project.	
2.3	Assist DOTr on the appropriate structuring of the PAFCS Concession Agreement, taking into consideration market	NEDA Submissions (i.e., Business Case,

	feedback and addressing key bankability issues raised by market players during the market sounding process. The transaction structure will carefully consider the distinct infrastructure and operational features of the PAFCS, and reflect relevant international best practices.	PE forms, Financial and Economic Models, VFM Analysis, Valuation of Assets as determined by Government Financial institution or Independent Property Appraiser) and other ICC approval documents
2.4	Assist DOTr in preparing submissions to obtain NEDA Board approval for the PAFCS Concession Agreement, including Feasibility Study / Business Case, Project Evaluation Forms, Financial and Economic Models, Value for Money Analysis, Risk Allocation and Mitigation Matrix, and addressing all queries and requests for additional information, as may be necessary or desirable to obtaining approval.	Milestone Payment 2: receipt of NEDA Board Approval
Milestone 3: Publication of Tender Documents		
3.1.	Preparation of Instructions to Prospective Bidders (ITPB), Instructions to Pre-Qualify and Bid (ITPQB), Instructions to Bidders (ITB), the PAFCS Concession Agreement, and/or other bidding / tender documents necessary and appropriate to the eventual procurement strategy adopted for the PAFCS Concession Agreement.	Publication of tender documents, which includes: - ITPB, ITPQB, ITB, CA, and/or Other Bidding/Tender Documents
3.2.	Preparation of Minimum Performance Standards and Specifications (MPSS), Key Performance Indicators (KPIs), and optimal and effective MPSS and KPIs penalty and enforcement mechanisms, drawing from all relevant and applicable international best practices.	- MPSS, KPIs, and other necessary documents Milestone Payment 3: publication of tender documents.
Milestone 4: Procurement to Award of the PAFCS Concession Agreement		
4.1.	Assist DOTr in managing the bidding / tender process, including conducting bidding conferences, setting up and maintaining virtual and/or physical data rooms, preparing answers to bidders' queries and other bid bulletins, and conducting one-on-one bidder conferences.	Actual conduct of Bid Conference Bid Bulletins, including re Answers to Bidders' Queries
4.2.	Assist DOTr in bid submission opening, evaluation, selection of winning bidder, and negotiations, as applicable, including detailed legal, technical, and financial evaluation of bids, and preparation of detailed Bid Evaluation Report. Selection of the winning bidder shall be conducted exclusively by the Clients in accordance with applicable law.	Bid Evaluation Report
4.3.	Preparation of award documentation.	Notice of Award Milestone Payment 4: Notice of Award signed by the winning bidder

Milestone 5: Signing of the PAFCS Concession Agreement		
5.1.	Finalization of the PAFCS Concession Agreement.	Execution Copy of the PAFCS Concession Agreement
5.2.	Assist DOTr in post-award to pre-contract signing by providing list of required post-award conditions, supporting DOTr in explaining to relevant offices and agencies the project structure and contract documents for other required approvals, and answering questions that may arise in relation to the project or contract documents, or provide any other similar assistance to DOTr.	Milestone Payment 5: signing of the PAFCS Concession Agreement
5.3.	Assist DOTr in the PAFCS Concession Agreement signing	
Milestone 6: Financial Close		
6.1.	Assist DOTr in post-contract signing to Financial Close (i.e., confirmation of equity and debt financing commitments) through assistance in explaining to lenders or other relevant parties the project structure, contract documents, and parties' obligations; assist DOTr in any (non-material) revisions of contract that may be required by lenders; and provide any other similar assistance to DOTr.	Financial Close Milestone Payment 6: achievement of Financial Close
Concessional Services		
7.1.	Capacity building as support for Project management	Capacity Building Programs
7.2.	Development of contract implementation and monitoring capabilities	Contract Implementation and Monitoring Support