**REPUBLIC OF KENYA**

**THE NATIONAL TREASURY**
**STATE DEPARTMENT FOR PUBLIC INVESTMENTS AND ASSETS MANAGEMENT**

**PUBLIC PRIVATE PARTNERSHIPS DIRECTORATE (PPPD)**

# TERMS OF REFERENCE

# FOR

# TRANSACTION ADVISORY SERVICES FOR THE KONZA CLOUD EXPANSION AND SMART CITY FACILITIES

**MARCH 2026**

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# 1. INTRODUCTION

## 1.1. Background

Konza Technopolis is a flagship project under Kenya Vision 2030 blueprint envisioned as a globally competitive smart city that drives Kenya's transition to a knowledge-based, innovation-led economy through advanced ICT and digital infrastructure, while accelerating the Digital Superhighway and Creative Economy pillar of the Bottom-Up Economic Transformation Agenda (BETA). It is designed as an integrated ecosystem supporting high-value industries, research, digital enterprises, and sustainable urban development. Upon completion of Phase I, Konza Technopolis is expected to contribute at least 2% to GDP, create about 17,000 jobs, and accommodate approximately 30,000 residents, with full buildout projected to support approximately 240,000 people as a major regional innovation and economic hub.

Konza Technopolis is a fully operational Special Economic Zone (SEZ) that has deployed world-class, smart, and sustainable infrastructure to anchor Kenya's innovation-led economic transformation. Phase I horizontal infrastructure across 400 acres is complete, including over 45KMs of streetscapes, a Water Treatment Plant, Water Reclamation Facility, electricity Distribution Substations, high-efficiency utilities, automated solid waste systems, and a high-capacity fibre backbone, creating a resilient and investment-ready environment for high-value industries and research institutions. Vertical development includes the Konza National Data Centre (KNDC) and Smart City facilities, the Konza Technopolis Office Block, Kenya-AIST, Riara University, the Open University of Kenya, residential units, and ongoing completion of the Konza Complex Conference Facility. As critical national digital infrastructure, the KNDC supports secure government hosting, sovereign cloud services, AI strategy implementation, and cybersecurity strengthening, directly advancing the Fourth Medium Term Plan (MTP IV) and BETA's Digital Superhighway and Creative Economy Pillar while positioning Konza as a catalyst for Kenya's digital economy and innovation-driven growth.

The Konza National Data Centre (KNDC) is the technological core of Konza Technopolis, a government-owned, Tier III certified facility mandated to provide secure, scalable digital infrastructure and promote localized data hosting in compliance with the Data Protection Act (2019). Through the KNDC, the Government has established the foundational digital backbone supporting smart city systems, including an Intelligent Transportation System across twelve sites, 141 integrated smart poles, approximately 600 surveillance cameras, environmental monitoring sensors, and 79 kilometers of high-capacity fibre network, all centrally managed through the Intelligent Operations Centre (IOC). Together with the Konza Smart Facilities and the Digital Experience Centre serving as a living laboratory for emerging technologies, this ecosystem positions Konza as a regional model for technology-enabled urban development. Having successfully delivered the core public infrastructure, Konza Tecnopolis is now transitioning to a commercial scaling phase, seeking to expand the KNDC's capacity and digital services through a high-performance Public-Private Partnership (PPP) that leverages private sector capital and expertise to enhance sustainability, innovation, and operational efficiency.

In its endeavor to accelerate Kenya's digital transformation agenda and strengthen sovereign cloud and smart city infrastructure, the Government of Kenya through the Public Private Partnership (PPP) Directorate, in accordance with the Public Private Partnership Act, 2021, intends to procure the services of a qualified Transaction Advisor (TA) to support the structuring and procurement of the Konza Cloud Expansion and Smart City Facilities Project under a Public-Private Partnership (PPP) arrangement. The Project seeks to expand the capacity, resilience, and technological capability of the Konza National Data Centre to meet growing national demand for secure data hosting, cloud services, AI-enabled infrastructure, disaster recovery, and digital public services, while simultaneously strengthening smart-city systems within Konza Technopolis.

**Sector Context**

Kenya's rapid digitization across government, financial services, healthcare, agriculture, education, MSMEs and security sectors has significantly increased demand for secure, scalable, and high-availability data infrastructure. The implementation of the National Digital Master Plan, Kenya's First Cloud Policy, 2024 the National AI Strategy (2025–2030), the National Cybersecurity Strategy, and the Fourth Medium-Term Plan (MTP IV) 2023–2027 underscores the urgent need for sovereign data infrastructure that meets international Tier III/IV reliability standards and supports Artificial Intelligence (AI), Internet of Things (IoT), high-performance computing, and cloud workloads.

The existing data center has established a foundational digital backbone for government systems and smart city operations. However, growing data volumes, increasing cybersecurity risks, cloud adoption, and regional demand necessitate expansion of data Centre capacity, enhancement of disaster recovery systems, and integration of advanced digital infrastructure technologies.

**Government Policy Alignment**

The KNDC Expansion Project is strategically aligned with Kenya Vision 2030, the Fourth Medium-Term Plan (MTP IV) 2023–2027, the Bottom-Up Economic Transformation Agenda (BETA), particularly the Digital Superhighway and Creative Economy pillar, as well as the National AI Strategy (2025–2030) and the National Cybersecurity Strategy. Through this alignment, the Project seeks to strengthen Kenya's digital infrastructure capacity, enhance sovereign data hosting capabilities, and position the country as a regional digital hub and trusted cloud service provider. The expansion will support secure e-Government systems, digital public infrastructure, fintech innovation, smart utilities management, AI-driven services, and broader private sector digital transformation, thereby reinforcing Kenya's competitiveness within the regional and continental digital economy.

The Project is proposed to be implemented under Public-Private Partnership structure, whereby the private partner will be responsible for financing, upgrading, expanding capacity, deploying advanced technologies, operating, and maintaining the existing KNDC facilities and associated digital infrastructure, while assuming performance and operational risks. Ownership of the core infrastructure shall remain with the Contracting Authority in accordance with the agreed PPP framework, with the private partner managing operations and service delivery for the duration of the concession period. The indicative PPP term is expected to be determined during PPP structuring, covering system upgrades, capacity expansion, operations, and lifecycle maintenance, subject to confirmation through the feasibility and structuring process.

The Project will be implemented under the PPP Act, 2021, and the Public Finance Management Act, 2012 and its related Regulations. KoTDA has completed the feasibility study and constituted a Project Implementation Team (PIT) to oversee development. The Project will proceed under a formal PPP arrangement governing performance, revenue, and lifecycle management, and PPP Directorate seeks to procure a Transaction Advisor to support structuring, documentation, market engagement, and procurement through to financial close.

The Transaction Advisor (TA) shall be engaged in supporting the structuring and procurement of the Project under the recommended PPP model, ensuring the Project is bankable, compliant with the PPP Act, 2021, and delivers value for money to the Contracting Authority. The TA's services shall include reviewing and refining existing feasibility outputs where necessary; undertaking any required supplementary technical, financial, environmental, and social analyses; assessing and optimizing PPP structuring options; developing robust financial models; preparing procurement documentation including Request for Quotation (RFQ), Request for Proposal (RFP), and draft PPP Agreement; and providing advisory support throughout the bidding and negotiation process up to financial close, or for a period of approximately 12 months from the effective date of the PPP Agreement, whichever occurs earlier.

The Transaction Advisor shall work closely with KoTDA as the Contracting Authority, the Public Private Partnership Directorate (PPPD) under the National Treasury, and other relevant government agencies as may be required during the assignment. The PPP Directorate shall exercise statutory oversight during the project development and procurement stages to ensure compliance with the PPP Act, 2021 and related Regulations, while the Transaction Advisor shall coordinate technical, financial, and legal inputs to support timely approvals and successful progression of the Project to financial close.

## 2. PROJECT DESCRIPTION

### 2.1. Background Documentation and Preparatory Work

The government embarked on the establishment of the Konza Tier III data Centre in 2019 and completed in 2021. The Data Centre has achieved the Uptime Institute Tier III Design and Construction Certification, and its designs and construction are in compliance with international standards. The project offers secure, reliable and efficient data storage and cloud hosting services to Ministries, Departments, Agencies, County Governments and private sector entities. The Uptime Tier III certificate for the KNDC is shown below. The KNDC provides Infrastructure-as-a-Service (IaaS), Platform-as-a-Service (PaaS), Software-as-a-Service (SaaS), collocation, and secure networking services to government institutions and private sector clients. The data Centre is presently operating at or near full capacity, limiting its ability to onboard additional Ministries, Departments, Agencies, County Governments, and enterprise clients in line with the Kenya Cloud Policy (2024), which mandates a cloud-first approach for public sector ICT systems.

In November 2025, Konza Technopolis Development Authority (KoTDA) completed a Feasibility Study for the Konza Cloud Expansion and Smart City Facilities Project. The study was undertaken to assess the technical, financial, economic, institutional, and environmental viability of expanding the existing Konza National Data Centre (KNDC) and associated smart city digital infrastructure. The Feasibility Study undertaken in 2025 identified strong and growing demand for sovereign, secure, and scalable cloud services driven by:

i. Increased digitization of government services;
ii. Implementation of the National Artificial Intelligence Strategy (2025–2030);
iii. Expansion of fintech, e-commerce, and digital public infrastructure;
iv. Requirements under the Data Protection Act (2019) for local data hosting;
v. Smart city infrastructure demands within Konza Technopolis; and
vi. Implementation of Kenya Cloud Policy which prioritizes cloud adoption for government services to enhance efficiency, security, and innovation "Cloud-First" approach for new IT projects, emphasizing data sovereignty, local data storage, and the growth of local Cloud Service Providers (CSPs).

Konza Technopolis Development Authority has completed preliminary development work for the Konza Cloud Expansion and Smart City Facilities Project, including a feasibility study and supporting technical and financial assessments, which the Transaction Advisor (TA) shall review, validate, and refine to ensure transaction readiness and compliance with the PPP Act, 2021, the Data Protection Act (2019), and relevant ICT Legislations and regulatory frameworks. KoTDA, as the Contracting Authority, will oversee the Project in coordination with the PPP Directorate under the National Treasury, while the TA will update technical, financial, commercial, and legal analyses to meet investment-grade standards and support successful PPP structuring and procurement. The Project forms part of KoTDA's mandate to develop and manage strategic digital infrastructure within Konza Technopolis, strengthening Kenya's sovereign cloud capacity, cybersecurity resilience, and regional digital competitiveness. The Transaction Advisor (TA) shall be required to thoroughly review, validate, and build upon all background documentation and preparatory work conducted to date. The TA shall undertake such additional technical, financial, commercial, and legal reviews as may be necessary to ensure the Project is transaction-ready, bankable, and compliant with the PPP Act, 2021 and applicable digital infrastructure standards. The review shall include, but not be limited to:

i. Existing feasibility studies, technical assessments, ICT infrastructure reports, cybersecurity assessments, and relevant audits;
ii. Information relating to the national and regional data Centre market structure, cloud demand, digital services ecosystem, and competitive landscape;
iii. Existing financial projections, revenue models, historical operational performance of the KNDC, and cost structures; and
iv. Applicable legal and regulatory frameworks including the PPP Act, 2021, Data Protection Act, 2019, ICT sector regulations, cybersecurity laws, SEZ regulations, tax frameworks, and any other relevant statutory instruments.

The TA shall identify gaps, update assumptions where necessary, and ensure that all documentation meets investment-grade standards suitable for PPP procurement and private sector financing. Further, the TA will be required to develop:

i. Propose a bankable contractual PPP structure and risk allocation framework;
ii. Undertake detailed financial modelling and affordability analysis;
iii. Structure transactions and procurements documentation; and
iv. Conduct a competitive procurement process to select a private party.

## 2.2. The Contracting Authority's

The Konza Technopolis Development Authority (KoTDA) shall act as the Contracting Authority for the Project in accordance with the Public Private Partnership Act, 2021 and PFM Act, 2012 and its Regulations. KoTDA shall be responsible for project oversight, stakeholder coordination, and compliance with statutory approval processes as prescribed under the PPP legal framework. The Public Private Partnership Directorate (PPPD) under the National Treasury shall provide statutory oversight during project development and procurement stages.

## 2.3. Mandate of KoTDA

KoTDA is mandated to plan, develop, and manage Konza Technopolis as a world-class smart city and innovation hub in line with Kenya Vision 2030 and national digital transformation priorities. As part of this mandate, KoTDA is responsible for developing and managing strategic digital infrastructure assets, including the Konza National Data Centre (KNDC), to support secure government hosting, sovereign cloud services, AI and high-performance computing capabilities, smart city systems, and broader digital economy growth. The KNDC Expansion Project forms a critical component of KoTDA's mandate to strengthen Kenya's digital infrastructure resilience, scalability, and competitiveness within the regional and continental digital ecosystem.

## 3. DESCRIPTION OF WORKS

### 3.1. Project Overview

The Government of Kenya, through the Konza Technopolis Development Authority (KoTDA), seeks to scale up national digital infrastructure capacity through a Public Private Partnership (PPP) arrangement for the expansion, commercialization, operation, and long-term maintenance of the Konza National Data Centre (KNDC). The broader policy objective is to strengthen Kenya's sovereign cloud capability, enhance national data security, support e-Government systems, and position Kenya as a regional digital and data services hub in alignment with the PPP Act, 2021, the Digital Superhighway agenda, and the National AI and Cybersecurity Strategies. The Project will focus on optimizing and expanding the existing KNDC facility (Tier III certified), enhancing service capacity, operational performance, revenue generation, and private sector participation under a bankable PPP structure.

### 3.2. Scope of the KNDC Expansion Project

The proposed PPP project shall broadly comprise the following components:

i. Expansion of data Centre capacity within the existing KNDC facility, including increased rack space, computing power, storage systems, and cloud infrastructure.
ii. Upgrade and optimization of mechanical, electrical, and cooling systems to enhance efficiency, redundancy, resilience, and compliance with Tier III (or higher, where applicable) standards.
iii. Deployment of advanced cybersecurity systems, data protection frameworks, and AI-enabled infrastructure management tools to support national digital resilience.
iv. Commercialization and scaling of sovereign cloud services for government institutions, state corporations, and private sector clients.
v. Integration with Konza's smart-city backbone infrastructure, including fiber connectivity, Intelligent Operations Centre (IOC), and digital service platforms.

vi. Establishing operational performance standards, Service Level Agreements (SLAs), and lifecycle maintenance frameworks to ensure high availability, reliability, and security.
vii. Implementation of energy-efficient and green data Centre technologies, including optimization of power usage effectiveness (PUE), renewable energy integration, where feasible, and sustainable cooling solutions.
viii. Development of revenue models including colocation services, managed cloud services, disaster recovery services, and digital platform hosting.
ix. Incorporation of innovative digital technologies and scalable modular infrastructure to accommodate future growth and emerging digital service demands.

## 4. OBJECTIVES OF THE TRANSACTION ADVISOR SERVICES

### 4.1. Generally

The overall objective of this assignment is to provide comprehensive Transaction Advisory Services to the Konza Technopolis Development Authority (KoTDA) for the structuring, procurement, and successful implementation of a Public Private Partnership (PPP) for the expansion, commercialization, operation, and maintenance of the Konza National Data Centre (KNDC) in accordance with the Public Private Partnership Act, 2021 and its applicable Regulations. Specifically, the Transaction Advisor shall:

i. Review the existing feasibility study and propose an optimal PPP contractual structure, recommending the most suitable delivery and procurement model for the Konza Cloud Expansion and Smart City Facilities Project and develop and refine a robust, investment-grade project financial model to test bankability, affordability, and fiscal sustainability;
ii. Advise KoTDA on optimal risk allocation and corresponding contractual arrangements, including preparation of all required structuring documentation and support in obtaining statutory approvals;
iii. Prepare comprehensive procurement documentation, including the Request for Qualification (RFQ), Request for Proposal (RFP), and draft Project Agreement (PA);
iv. Provide advisory support during bidder engagement, evaluation, and negotiations with the preferred bidder;

v. Support KoTDA through financial close, including coordination with lenders and investors;
vi. Transfer Knowledge and Skills to Konza Technopolis Development Authority Project Implementation team to enhance project sustainability; and
vii. Explore and recommend viable domestic capital mobilization mechanisms to enhance local participation and deepen Kenya's digital infrastructure financing ecosystem.

### 4.2. Financial Structuring and Modelling

The TA shall develop a comprehensive shadow financial model to test and validate the Project's commercial and fiscal sustainability. The model shall cover capital investment requirements, operational expenditure, revenue streams, pricing mechanisms, financing structure, repayment profiles, and return expectations. The financial structure shall evaluate potential Government support mechanisms where necessary, including viability gap support or contingent liability exposure, and recommend an optimal blend of equity, debt, and domestic capital mobilization strategies to ensure bankability and long-term sustainability.

### 4.3. Pilot and Demonstration Value

The Konza Cloud Expansion and Smart City Facilities Project is envisaged as a flagship digital infrastructure PPP under the Digital Superhighway agenda and may serve as a reference model for future ICT and data infrastructure PPPs in Kenya. Accordingly, the TA shall apply international best practice in structuring digital infrastructure concessions, sovereign cloud partnerships, and data Centre commercialization models, while ensuring compliance with Kenyan law and PPP Directorate requirements.

### 4.4. Public Interest and Strategic Outcomes

The Project is intended to strengthen Kenya's sovereign data hosting capacity, enhance cybersecurity resilience, support e-Government services, and catalyze private sector digital growth. The TA shall ensure that the PPP structure safeguards national data interests, promotes service reliability and affordability for public institutions and commercial users, and aligns with national digital transformation, Kenya First Cloud Policy, Artificial Intelligence, and Cybersecurity strategies.

### 4.5. Domestic Capital Mobilization

Kenya's local financial markets including pension funds, insurance companies, banks, and capital markets represent a significant and stable source of long-term capital suitable for infrastructure PPPs, with pension and insurance assets exceeding KES 3 trillion collectively. The Government has prioritized increased mobilization of domestic institutional capital to reduce reliance on external borrowing, mitigate foreign exchange risks, enhance political acceptability, and strengthen financial sovereignty. This policy direction is reinforced through the establishment of the National Infrastructure Fund as a blended financing vehicle for strategic projects. Accordingly, the Transaction Advisor will explore and structure viable mechanisms for mobilizing local capital in the Konza Cloud Expansion and Smart City Facilities, including the development of optional stapled-financing structures within the procurement framework.

## 5. SCOPE OF WORK

**5.1** KoTDA, under provisions of the PPP Act, 2021, wishes to engage a Transaction Advisor (TA) to assist with all the phases of the project preparation. The scope of work is divided into the following two key phases.

**5.2** **Phase I:** Review and validation of the Feasibility Study, development of the project implementation schedule; market sounding and development of all transaction documents needed for PPP approvals up to approval of project development phase including required disclosures.

a. Feasibility Study Validation/Preparatory Work: To review the existing feasibility analysis and propose a bankable PPP structure for the KoTDA Data Centre Expansion Project, including technical design refinement, financial modelling, and risk allocation matrix.
b. Develop a commercialization strategy for the Konza National Data Centre and smart city facilities (which includes smart phones, CCTV Cameras, Weather sensors, traffic monitoring system etc). The Transaction Advisor shall:

A. **Technical Design Validation:**

i. Review the exiting completed feasibility study, validate and update demand projections for cloud services, Software as a Service, Platform as a Service, colocation, AI workloads, and government digitization requirements.
ii. Propose output-based technical specifications suitable for a PPP procurement, including but not limited to:

- Server and storage architecture.
- Network backbone design.
- Cybersecurity framework.
- Power and cooling configuration.
- Performance and availability standards.

iii. Assess the current capacity, utilization levels, and operational performance of the existing Konza National Data Centre (KNDC).
iv. Evaluate the adequacy of power, interconnection, and identify preparatory requirements necessary for project implementation, including integration with Konza's smart-city and digital-superhighway infrastructure.

B. **Legal and Regulatory Review**

i. Validate and update feasibility section on the legal and regulatory framework applicable to data-Centre development, cloud services, and PPP implementation, including the PPP Act, 2021**,** Data Protection Act, 2019**,** and relevant ICT and energy-efficiency regulations.
ii. Propose a contractual structure based on the selection of suitable PPP arrangements.
iii. Prepare a risk allocation matrix.
iv. Assist KoTDA prepare disclosures required for the project at all stages of approval in accordance with PPP Act, 2021.

C. **Financial and Commercial Analysis**

i. Analyze the project's financial metrics and propose funding structure.
ii. Recommend the preferred PPP model (e.g., DBFOM or BOOT).

iii. Build the project financial model incorporating CAPEX, OPEX, revenue, and tariff projections under different utilization and pricing scenarios. This will act as the shadow bid model.
iv. Undertake a Value for Money (VfM) and affordability analysis**,** comparing PPP versus public procurement delivery.
v. Develop a risk-allocation matrix**,** assigning risks between KoTDA, the private partner, and lenders.
vi. Prepare a Public Sector Comparator (PSC) to benchmark PPP implementation against direct public investment.
vii. Propose an Equity IRR acceptable for the project based on market sounding and CAPM.
viii. In accordance with GOK's PPP Fiscal Commitment and Contingent Liability (FCCL) Management Framework, the TA will also analyze and quantify the potential fiscal risk and contingent liabilities of the Project including termination sums over project life based on proposed termination clauses.
ix. Design and structure indicative and optional stapled financing, ensuring that terms are transparent, competitive, and market tested.
x. Present the optional stapled financing to all prequalified bidders as part of the RFP, ensuring neutrality, non-exclusivity, and standardized access.

D. **Market Sounding**

i. Prepare a Market Sounding document that will include a Project information memorandum (which will cover the objectives of KoTDA, an overview of the Project, the process and timetable for procurement, outline Risk Allocation), as well as a summary of the key issues to be discussed with and questions to be asked of the market, i.e. equity investors, debt financiers, contractors and operators, the process of how the market sounding will be conducted, the proposed list of parties to be approached;
ii. Provide the Project Profile to the identified private parties and hold discussions with them, either telephonically, or if practical and cost effective, face to face; and
iii. Prepare a Market Sounding Report (which will form an appendix to the Feasibility Study) that will summarize the findings from the exercise and will consist of, but is not limited to, the following information: Market sounding objective; Key issues that needed to be considered; List of companies consulted; List of questions and answers; and Summary findings and matters considered in the Feasibility Report.

**5.3** **Phase II:** Development of requisite tender documents (RFQ, RFP and Project Agreement), tender process organization, and support on transaction implementation through financial close. This includes setting up of a data room; bid documentation; bid process implementation and support for bidders' consultations and RFP evaluation support; supporting contract negotiations post award with the Preferred Bidder. The TA shall support KoTDA and the PPP Directorate in competitively procuring a private partner, structuring a bankable transaction, and achieving financial close.

**A. Procurement Preparation and Documentation -** The Transaction Advisor (TA) shall:

i. Prepare the complete set of procurement documents in line with the **PPP Act, 2021**, including: Request for Qualification (RFQ) and evaluation criteria; Request for Proposal (RFP) with detailed instructions, technical requirements, and financial terms; and Draft PPP Agreement, capturing the project's commercial framework, performance standards, and risk allocation.
ii. Advise on optimum bid strategy and mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
iii. Prepare Project Information Memorandum and other marketing materials, including Tender documentation.
iv. Develop evaluation criteria and scoring methodology for technical, financial, and performance-linked components to ensure transparency and VfM.
v. Support KoTDA and the PPP Directorate in securing PPP Committee approval of procurement documents prior to issuance.

In preparing the procurement documents, the TA is expected to define eligibility criteria and bidding parameters.

**B. Procurement Process Management**

The Transaction Advisor (TA) shall:

i. Support KoTDA throughout the bidding process, including:

- Issuance of RFQ and management of prequalification submissions;

- Evaluation and recommendation of shortlisted bidders;
- Issuance of RFP, pre-bid meetings, data-room management, and clarifications; and
- Bid evaluation and preparation of the Bid Evaluation Report for approval.

ii. Ensure full compliance with the PPP Act, 2021 principles of competition, transparency, and equal access.

**C. Drafting, Review and Negotiation of the Project Agreement**

The Transaction Advisor (TA) shall:

i. Support KoTDA and the PPP Directorate in preparation and negotiation of all project documents with the preferred bidder including the project agreement and its annexures and assistance in:

   - Finalization of risk allocation, payment mechanisms, and performance standards; and
   - Adjustment of technical, legal, and financial provisions where needed.

ii. Update and validate the financial model to reflect negotiated terms, confirming affordability, fiscal exposure, and VfM.

iii. Assist in securing all necessary legal, regulatory, and fiscal approvals for contract signing.

The draft PPP Agreement prepared by the Transaction Advisor shall include all minimum contractual obligations specified in the Third Schedule of the Public Private Partnerships Act, 2021.

In drafting the PPP Agreement, the Transaction Advisor shall ensure compliance with Section 68 of the Public Private Partnerships Act, 2021, which mandates the establishment of a project company, being a special purpose vehicle, by the successful bidder in accordance with the Companies Act, 2015.

i. The draft agreement shall include provisions requiring the project company to provide such performance security and fulfill such conditions as may be specified in the project agreement, as provided for under Section 68(2)(b) of the Public Private Partnerships Act, 2021.

ii. The draft agreement shall further provide that the project company shall not be wound up, its legal structure altered, or its share capital reduced without the written approval of the Contracting Authority, and that a majority shareholder shall not transfer shares or permit dilution of its majority stake before issuance of the final acceptance certificate by KoTDA, as provided for under Section 68(3) and (4) of the Public Private Partnerships Act, 2021.
iii. The draft agreement shall also provide that the project company shall not pledge its shares except for the purpose of financing the project, and that any transfer of shares resulting in change of control shall require the prior written approval of the Contracting Authority, as provided for under Section 68(7) and (6) of the Public Private Partnerships Act, 2021 respectively.

### D. Commercial and Financial Close

The Transaction Advisor (TA) shall:

i. Support KoTDA in achieving **Commercial Close**, including execution of the PPP Agreement and related contracts and satisfaction of Conditions Precedent (CPs).
ii. Facilitate **Financial Close** by:
    - Assisting with the review of financing and security agreements and assisting with any negotiations between GOK and lenders.
    - Ensuring compliance with CPs and GoK fiscal-risk management frameworks.
    - Assist GOK in fulfillment of its CPs including preparation of any Government Support Measures required.
    - The TA will be expected to update the financial model through the period of financial close incorporating the terms of the executed financing agreements

### E. Development of Contract Management Framework for the Project

The TA, in close liaison with KoTDA, shall design a project specific contract management framework in accordance with the provisions of the Project Agreement (PA) and the project's risk allocation structure. This will include a clear, complete and easy-to-follow guide for KoTDA on the implementation of the PPP, with mapping of the different rights and obligations of all parties, including the role of the Independent Engineer and guidance to KoTDA on processes, remedies and mechanisms set out in the Project Agreement.

## F. Public Disclosure Advisory

The Transaction Advisor shall advise KoTDA on compliance with Section 69 of the Public Private Partnerships Act, 2021, which mandates publication of the executed project agreement and key project information.

i. The Transaction Advisor shall prepare a summary of the project agreement suitable for public disclosure, including the nature of the project, key terms, the successful bidder, the amount of public funds committed, the project tariff where applicable, any government support measures provided, the social and economic benefits of the project, the project duration, and the monitoring arrangements, all as required under Section 69(1) of the Public Private Partnerships Act, 2021.
ii. The Transaction Advisor shall advise on the manner of publication in at least two newspapers of national circulation and electronic media, in accordance with any guidelines issued by the PPP Directorate, as contemplated under Section 69(2) of the Public Private Partnerships Act, 2021.
iii. The Transaction Advisor shall ensure that any confidentiality provisions in the PPP Agreement do not conflict with these statutory disclosure requirements.

## 5.4 Deliverables of the Assignment

The general deliverables[1] of the project are as represented in the table below

| No. | Deliverable | Target Timeline (Period in weeks) |
|---|---|---|
| **Phase I** | | |
| 1 | Review and validation of the Feasibility Study Report<br>• Updated Feasibility Study Report<br>• Commercialization strategy for the Konza National Data Centre and smart city facilities<br>• Project Financial Model | 3 weeks |

| | | |
|---|---|---|
| 2 | Market Sounding<br>• Market sounding report<br>• Disclosures | 2 weeks |
| **Phase II** | | |
| 5 | Bidding stage documents, including RFQ, RFP with staple-financing structure, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents | 5 weeks |
| 6 | Completion of the RFP bidding process and evaluation of bids, and delivery of the evaluation report | 4 weeks |
| 7 | Draft Project Agreement and Negotiation Report | 4 weeks |
| 8 | Commercial Close, Project's contract management framework and case study | 2 weeks |
| 9. | Financial Close | 4 weeks |
| | **TOTAL** | **24 weeks** |

The above timelines are indicative. Bidders are expected to include, as part of their proposal, anticipated dates of delivery. Bidders are expected to provide a comprehensive and detailed Project Implementation Plan, preferably using Microsoft Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation, capturing as a bare minimum the following tasks. This detailed plan will be discussed and agreed with KoTDA and PPP Directorate before signing the contract.

The TA shall submit an Inception Report including an updated detailed work plan for project implementation, covering tasks and responsibilities of all parties involved not just the TA's personnel.

The TA, in close coordination with KoTDA, shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The TA shall make presentations to the Project Implementation Team on each deliverable.

## 5.5 Duration of the Assignment

The assignment is expected to take 6 months from the commencement of services as indicated under Section 5.4 and the Transaction Advisor shall be expected to enter a contract for twelve (12) months for the assignment.

Bidders are expected to provide a comprehensive and detailed Project Implementation Plan, preferably using Microsoft Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation.

This detailed plan will be discussed and agreed with the Contracting Authority and PPP Directorate before signing the contract.

## 5.6 Project-Based Learning

To ensure knowledge and skills transfer by the TA to the Konza project implementation team, the TA will be expected to incorporate a project-based learning approach. All bidders are therefore expected to enumerate a clear and deliberate approach as to how knowledge and skills will be transferred to the Konza project implementation team.

## 6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE

The Transaction Advisor will be a firm or consortium of firms, collectively covering the range of technical, financial, and legal to procure the development of a Data Centre through a PPP transaction.

The Transaction Advisor (TA) will be a single organization or consortium of firms led by a Technical Advisor. The Lead Advisor will be held accountable in terms of the Transaction Advisor contract for ensuring Project deliverables and for the professional conduct and integrity of the team. The TA will review the draft feasibility study in place and update the technical and financial aspects of the project. The TA will enter into contract with the Client (the National Treasury and Konza Technopolis Development Authority).

Team members may not be changed or removed without the prior written approval of Konza Technopolis Development Authority and the PPP Directorate confirming replacement with someone at least as qualified and capable. Each individual on the team must be personally available to do the work as and when required.

### 6.1 Qualifications Requirements of the Firm

The Transaction Advisor shall be a reputable firm or consortium with demonstrated capability to structure, procure, and achieve financial close for complex PPP infrastructure projects. The firm must demonstrate:

**General Experience**

- Experience in PPP project structuring, financial modelling, financial analysis, financial advisory, legal feasibility analysis and advisory, procurement, and negotiations of PPPs with evidence of having led Transaction Advisory assignments on at least three (3) PPP projects, with at least two (2) financially closed projects. Additional credit will be given for an ICT project financed through project finance; (only experience in the last 15 years will get credit, with preference given for more recent experience);

- Experience in project development and procurement for large infrastructure projects with project costs excluding land of more than KSh 2 billion (only experience in the last 15 years will get credit, with preference given for more recent experience).

- § Experience in developing operations and maintenance schedules for large infrastructure projects (only experience in the last 15 years will get credit, with preference given for more recent experience);

- § Demonstrated experience in structuring and raising capital or financing for infrastructure projects from local institutional capital providers including domestic infrastructure funds, pension funds, and capital markets, particularly under BOT, DBFOM, concession, or similar PPP or project finance arrangements.

- § Demonstrated consultancy experience in planning and facilitating public validation sessions for assignments of national importance (only experience in the last five (5) years shall be considered; bidders must demonstrate having successfully conducted at least two (2) public validation workshops or stakeholder validation forums for national policies, strategies, programmes, or similar assignments, including experience in ensuring inclusive participation through stakeholder mapping and engagement that incorporates women, youth, and persons with disabilities (PWDs) in a transparent and non-discriminatory manner).

**Specific Experience**

- § Experience in the design of data centres, cloud infrastructure, smart city, telecommunications, or other large-scale ICT enabled infrastructure projects, including projects involving modular expansion, cybersecurity systems, or high-availability infrastructure environments. (Only experience in the last 15 years will get credit, with preference given for more recent experience;

- § Demonstration of consultancy experience in development of operational and maintenance procedures for data centres. (only experience in the last 15 years will get credit, with preference given for more recent experience);

- § Demonstrated consultancy experience in project structuring, financial advisory, procurement and negotiation for data centres that have been implemented or under construction. Additional credit will be given for data centres in Africa.

§ Demonstrated consultancy experience in designing and implementing capacity-building programmes for public sector institutions (only experience within the last five (5) years shall be considered; bidders must demonstrate having successfully designed and delivered structured capacity-building programmes for government officials, aimed at strengthening institutional and technical capabilities).

**NB:** Under each of the experience criteria, firms are expected to clearly state relevant projects or transactions for the experience required, the country where the project was done, and the stage in the PPP project cycle where the firm reached with the project. This should be supported by relevant documentation (TA contract award letters, completion certificates, letters of recommendation or extracted relevant sections of the consultancy contracts etc).

Given the field-intensive nature of the assignment, the Consultant shall demonstrate the capacity to maintain a continuous and effective operational presence in Kenya for the duration of the assignment. This requirement may be satisfied through an existing operations office in Kenya or through a formal association with a Kenyan consulting firm (joint venture or sub-consultancy) with the relevant technical capability and experience. Evidence of such arrangements shall be provided in the proposal by the bidders.

### 6.2 Key Personnel Requirements

As a minimum, the Transaction Advisor's team will include the following experts:

**Key Experts**

1. PPP Structuring Expert/Team Leader
2. ICT Engineer
3. Kenyan PPP Legal Experts
4. Cloud Engineer

### 6.3 Key Personnel and Time Input

*Table 1: Specified Key Personnel Expertise Expectations*

| No. | Position | Expertise Expectations |
|---|---|---|
| 1. | PPP Financial Expert/Team Leader | • The team lead should have a university degree in Finance, Management, Economics, Engineering, Law or any other relevant field.<br>• Postgraduate qualification in PPP, Infrastructure Finance or Project Finance shall be an added advantage.<br>• A minimum of 10 years' demonstrated experience in infrastructure project management and development, with at least 7 years providing PPP transaction advisory services/ development of large infrastructure projects on PPP basis including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring.<br>• Experience in successful preparation of PPP or project finance projects with at least two (2) financially closed projects, of which one (1) should be in the ICT sector.<br>• Expertise in project finance financial modelling, audit of PPP financial models, fiscal impact assessment and financial advisory of PPPs<br>• Demonstrated experience in dealing with project finance structures and products and experience in financially closing at least two (2) PPP projects.<br>• Good English communication and writing skills, especially in report writing, are essential.<br>• Project Management experience<br>• Overall coordination and strategic leadership |
| 2. | ICT Engineer | • A university degree in Information Communication Technology (ICT), or a related discipline.<br>• Minimum 7 years' professional experience in information communication technology (ICT), |

| No. | Position | Expertise Expectations |
|---|---|---|
| | | network operations, server and hardware management, disaster recovery, cloud infrastructure engineering, capacity planning of which a minimum of 5years should be demonstrated experience in data centres.<br>• A Certification in Systems Engineering Professional (CSEP) or related certification.<br>• Experience in procurement and bid process management for ICT projects particularly Data Centres.<br>• Project finance or PPP experience will be an added advantage.<br>• Good English communication and writing skills, especially in report writing, are essential. |
| 3. | Kenyan PPP Legal Expert | • A university degree in Law (Bachelor of Laws (LL.B) degree).<br>• Admission to practice law in a recognized jurisdiction.<br>• Postgraduate qualification in commercial law, project finance, energy law or PPP shall be an added advantage.<br>• A minimum of 10 years' demonstrated experience in international law, Commercial Law, Contract Law, drafting PPP contractual agreements and other related documents/ agreements; PPP procurement, managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of PPP projects with at least two financially closed PPP projects.<br>• Participation in at least three (3) project finance infrastructure transactions with at least one being a project in the ICT sector.<br>• Demonstrated expertise in Intellectual Property (IP) Law. |

| No. | Position | Expertise Expectations |
|---|---|---|
| | | • Demonstrate understanding of Kenya's Legal and Institutional Framework with specific knowledge of Kenya's PPP legal framework, including the PPP Act, Public Procurement and Asset Disposal Act, and Kenya and Communications Act.<br>• Experience in ICT Data Centre Projects will be an additional merit.<br>• Good English communication and writing skills, especially in report writing, are essential. |
| 4. | Cloud Engineer | • A university degree in Communication, Information Technology, or a related discipline.<br>• Minimum 7 years' experience in cloud infrastructure engineering.<br>• The team lead should have experience in data analytics, including the design and implementation of a scalable, secure platform to support real time and batch processing, AI/ML model developments, simulation and deployment, data governance, and quality automation.<br>• Demonstrated experience with hyperscale cloud environments.<br>• Certification in Cloud Security Professional (CCSP)<br>• Certification Information Systems Security Professional (CISSP)<br>• Experience in Data Centre design, implementation, and data modelling.<br>• Professional certifications such as: AWS Solutions Architect Professional, Azure Solutions Architect Expert, Google Professional Cloud Architect will be an added advantage.<br>• Good English communication and writing skills, especially in report writing, are essential. |

All proposed individual members of the team must be personally available to do the work as and when required.

## 7. REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS

The Transaction Advisor contract will be a lump sum contract and will be paid based on timely and acceptable deliverables over an envisaged contract period of 12 calendar months.

The remuneration schedule is as set out below: Bidders must submit bids in the formats prescribed in the RFP. Bidders should specify a fixed amount for each of:

- Phase 1 (the "Phase 1 Amount") - 30% of the contract amount
- Phase 2 (the "Phase 2 Amount") - 70% of the contract amount

The following disbursement schedule is set for each phase of the contract. Bidders should keep these in mind in writing their proposals.

| No. | Milestone / Deliverable | % of Contract Amount |
|---|---|---|
| **Phase I** | | |
| 1 | Completion of validation and updating of draft feasibility report and delivery of shadow bid financial model | 20% |
| 2 | Completion of market sounding and delivery of market sounding report and final feasibility study report | 10% |
| **Subtotal – Phase 1** | | **30%** |
| **Phase II** | | |
| 3 | Delivery of bidding stage documentation (tender documents, draft PPP agreement, design criteria, performance specs, evaluation criteria and other bid documents) | 20% |
| 4 | Completion of RFQ and RFP bidding process including evaluation of bids and approval of evaluation report | 15% |
| 5 | Completion of due diligence on selected bidder and delivery of Due Diligence Report | 10% |
| 6 | Successful completion of negotiations and execution of PPP Agreement; delivery of | 20% |

| | | |
|---|---|---|
| | negotiation report and contract management framework | |
| 7 | Financial close and delivery of close-out report and final case study | 5% |
| **Subtotal – Phase 2** | | **70%** |
| | **Total Contract Amount** | **100%** |

After Phase 1, Konza Technopolis will decide whether to proceed with Phase 2. If Konza decides not to proceed with Phase 2, the contract with the TA will be terminated.

### 7.1 Success Fee and Recoverable Costs Compliance

In accordance with Section 29 of the Public Private Partnerships Act, 2021, the Transaction Advisor shall take note of the following statutory provisions in structuring the project agreement:

i. **Success Fee:** A success fee not exceeding one per cent (1%) of the total project cost shall be payable by the private party that achieves financial close on the project. This success fee shall be paid into the Public Private Partnership Project Facilitation Fund, as provided under Section 29(1) and (3) of the Public Private Partnerships Act, 2021.

ii. **Recoverable Project Development Costs:** The costs incurred by the PPP Directorate or the Contracting Authority in respect of transaction advisory services supporting project preparation and procurement activities shall be recovered in full, without adjustment for inflation, from the private party that enters into the project agreement. Such recoverable project development costs shall be paid into the Public Private Partnership Project Facilitation Fund in accordance with Section 29(2) and (3) of the Public Private Partnerships Act, 2021.

iii. **Transaction Advisor's Role:** The Transaction Advisor shall ensure that the draft PPP Agreement includes appropriate provisions for the payment of success fee and the reimbursement of recoverable project development costs by the successful private party. The Transaction Advisor shall further assist the Contracting Authority and the PPP Directorate in identifying, quantifying, and documenting such costs for recovery purposes, as contemplated under Section 29 of the Public Private Partnerships Act, 2021.

## 8. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE

A Project Implementation Team (PIT), composed of representatives from Konza Technopolis and the PPP Directorate, will review and assess the acceptability of project deliverables. During the tender stage, Konza Technopolis shall also create an Evaluation Team, (Contract) Negotiation Committee, and other bodies specified in the PPP Act, 2021.

Konza Technopolis shall provide the Transaction Advisor with all available pertinent data and previous studies including the existing feasibility study. Konza Technopolis will liaise with other agencies to ensure that the TA has access to all information required as may be allowed under Kenyan laws.

The TA will be responsible for providing all necessary facilities and logistical support for its staff, including office space, vehicles, miscellaneous transportation, office equipment (computers, printers, telephone, and internet services), survey and investigation equipment, communications, utilities, office supplies and other miscellaneous costs for carrying out the services as per the requirements of the TOR.

Further, the TA will need to provide all the administrative, technical professional, and support staff needed to conduct their services including market/demand survey teams, social surveys teams, etc. as deemed necessary.

## 9. BID EVALUATION CRITERIA

The selection method shall be quality and cost-based. The evaluation committee shall evaluate the proposals on the basis of their compliance and responsiveness to ToR's.