

TENDER FOR THE FRAMEWORK AGREEMENT

FOR

THE ESTABLISHMENT OF AN APPROVED LIST FOR THE PROVISION OF REMEDIATION AND REHABILITATION OF ENVIRONMENTAL INCIDENTS/ SPILLAGES SERVICES AT TRANSNET PIPELINES FACILITIES (DEPOTS AND PUMP STATIONS) AND THE PIPELINE NETWORK, ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS

PURPOSE OF THE TENDER

- A. The purpose of this tender is for the Employer to pre-qualify contractors based on functionality and expertise to establish an approved list of contractors for the provision of remediation and rehabilitation of environmental incidents / spillages services at Transnet Pipelines facilities (depots and pump stations) and the pipeline network, on an as and when required basis for a period of three years ("the Pre-Qualified Contractor/s").
- B. The Employer may from time to time invite the Pre-Qualified Contractors to competitively tender for the services. Such competitive tender process may result in the Contractor providing some or all of the Services to the Employer under the proposed terms of the Agreement.
- C. When the Employer requires such services from the Contractor, the Employer shall issue an RFQ to all the Pre-Qualified Contractors. Following evaluation of the Contractor's RFQ Response (including but not limited to price and B-BBEE rating in terms of the PPPFA), the Employer may opt to enter into services contract/s with the Contractor in accordance with this Agreement.
- D. There are no guarantees made by the Employer that the Contractor shall be awarded any of the service contracts.

- E. The parties shall enter into the framework agreement on the terms and conditions recorded below.

DRAFT FRAMEWORK AGREEMENT

for

THE ESTABLISHMENT OF AN APPROVED LIST FOR THE PROVISION OF REMEDIATION AND REHABILITATION OF ENVIRONMENTAL INCIDENTS/ SPILLAGES SERVICES AT TRANSNET PIPELINES FACILITIES (DEPOTS AND PUMP STATIONS) AND THE PIPELINE NETWORK, ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS

entered into

between

Transnet SOC Limited

Registration number: 1990/000900/30

("Employer")

And

[•]

Registration number: [•]

("Contractor")

1. BACKGROUND

- 1.1 The Contractor is in the business of providing the Services.
- 1.2 The Employer has pre-qualified contractors for the provision of the Services
- 1.3 Based on the approved list of pre-qualified contractors the Employer shall require the Contractor to competitively tender for the Services. Such competitive tender may result in the Contractor providing some or all of the Services to the Employer under this Agreement.
- 1.4 When the Employer requires Services from the Contractor, the Employer shall issue an RFQ to all pre-qualified contractors. Following evaluation of the Contractor's RFQ Response (including but not limited to price and B-BBEE rating in terms of the PPPFA), the Employer may opt to enter into Services Contract/s with the Contractor in accordance with this Agreement.
- 1.5 There are no guarantees made by the Employer that the Contractor will be awarded any of the Service Contracts.
- 1.6 Each Service Contract will incorporate the terms and conditions set out in this Agreement, together with project specific criteria.

2. Definitions

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them:

- 2.1 **"Agreement"** means this framework agreement;
- 2.2 **"Appointment"** means the letter of appointment issued by the Employer to the Contractor;

2.3	“Confidential Information”	<p>means the terms of this Contract and any and all data, reports, records, correspondence, notes, compilations, studies, any information that concerns the business, operations, finances, plans and other information made available or disclosed directly or indirectly by the disclosing party to the receiving party at any time, but does not include information which:</p> <ul style="list-style-type: none"> (a) is or becomes public knowledge other than by a breach of this Contract; (b) is in the possession of the receiving party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the receiving party or (c) has been independently developed by the receiving party or acquired from a source which was not subject to a duty of confidentiality to the disclosing party;
2.4	“Contractor”	means [•], a company incorporated and registered in accordance with the laws of the Republic of South Africa with registration number [•];
2.5	“Effective Date”	means [•] ¹ , being the date on which the appointment letter is signed;
2.6	“Employer”	means Transnet SOC Limited, with registration number 1990/000900/30;
2.7	"Parties"	means the parties to this Agreement, and "Party" shall mean any one of them as the context may require;
2.8	“Pre-qualified”	means the process of the Employer pre-qualifying contractors based on functionality and expertise to establish an approved list of contractors for the provision of remediation and rehabilitation of environmental incidents / spillages services at

¹ **Drafting note:** Insert Date

		Transnet Pipelines facilities (depots and pump stations) and the pipeline network, on an as and when required basis for a period of three years;
2.9	“RFQ”	means a request for quotation as issued by the Employer;
2.10	“Schedules”	means the annexures to this Agreement;
2.11	“Services”	means the scope of services included as Part C3 to this Agreement;
2.12	“Services Contract”	means an agreement for the provision of the Services by the Contractor to the Employer over a specific period of time within the Term which contracts may take the form of any of the NEC3 contracts, including but not limited to: <ul style="list-style-type: none"> • NEC3 Term Services Contract; • NEC3 Professional Services Contract; and/or • NEC3 Engineering and Construction Contract.
2.13	“Term”	means the period beginning on the Effective Date and ending on termination, or upon the expiry of a 3 (three) year period.

3. Interpretation

- 3.1 Clause, schedule and paragraph headings of this Agreement are for purposes of reference only and shall not be used in the interpretation of this Agreement.
- 3.2 Unless the context clearly indicates a contrary intention, any word connoting:
- 3.2.1 any gender includes the other two genders;
 - 3.2.2 the singular includes the plural and *vice versa*;
 - 3.2.3 natural persons includes artificial persons and *vice versa*;
 - 3.2.4 insolvency includes provisional or final sequestration, liquidation or judicial management.
- 3.3 When any number of days is prescribed such number shall mean calendar days, unless business days are expressly referred to, and shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public

holiday in the Republic of South Africa, in which case the last day shall be the next succeeding business day.

- 3.4 A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 3.5 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 3.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 3.7 The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 3.8 Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.
- 3.9 The Schedules form part of this framework agreement and shall have effect as if set out in full in the body of this framework agreement. Any reference to this framework agreement includes the Schedules.

4. Purpose and Effect

- 4.1 The Employer has Pre-Qualified contractors. The agreed and accepted Contractor's functionality and expertise as per RFP requirements.
- 4.2 This Agreement gives the Employer the option to select a Contractor to provide the Services following a selection procedure through a request for quotation ("RFQ").
- 4.3 The Contractor shall supply the Employer with the Services on the terms of this Agreement pursuant to one or more Service Contracts, signed on behalf of the Contractor and the Employer.
- 4.4 The Employer's option shall be enforceable as many times as the Employer wishes prior to expiry of the Agreement.

5. Commencement and Duration

- 5.1 This Agreement shall commence on the Effective Date for the Term, unless terminated earlier in accordance with the provisions of this Agreement.
- 5.2 The Contractor performs and completes Services under any Service Contract on condition that the Service Contract is placed prior to the expiry of the Term, notwithstanding the expiry date of the Term. For the avoidance of doubt, if a Service Contract is confirmed with the Contractor in month 35, which Service Contract is placed for a period of 6 months, the Contractor is required to complete such 6-month Service Contract, irrespective of the Term having expired.

6. Request for Quotation

- 6.1 The terms of this Agreement shall be deemed to be incorporated into each Service Contract, as amended by the applicable Service Contract.
- 6.2 The Employer shall be entitled from time to time to request in writing the provision of any or all of the Services from the Contractor in relation to specific sites, by issuing an RFQ to the Contractor.
- 6.3 The RFQ shall include (but not be limited to) the following information:
 - 6.3.1 Contract Data for the applicable Services Contract;
 - 6.3.2 Site specific scope of work;
 - 6.3.3 site information;
 - 6.3.4 a period of time, within the Term, for which the Services must be provided;
 - 6.3.5 Pricing Schedule; and
 - 6.3.6 B-BBEE status level as per the Preference Points System.
- 6.4 The RFQ shall require (but not be limited to) the following information being submitted by the Contractor:
 - 6.4.1 a completed pricing schedule for the Services as outlined in the RFQ;
 - 6.4.2 a valid B-BBEE Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a sworn affidavit confirming annual turnover and level of black ownership in case of all EMEs and QSEs with 51% black ownership.

- 6.5 Within 14 days or such other period as stipulated in the RFQ, of receipt of an RFQ from the Employer, the Contractor shall complete and submit a response to the RFQ ("the RFQ Response").

7. Employer's Evaluation

- 7.1 Following receipt of the RFQ Response the Employer shall reply to the RFQ Response by accepting, rejecting or requesting further information.
- 7.2 No guarantees are made by the Employer that the Contractor will be issued with a minimum number of Service Contracts instructing the execution of Services for the Term.
- 7.3 The Contractor's information as submitted in relation to the Contractor's tender submission for the Establishment of an Approved List for the Provision of Remediation and Rehabilitation of Environmental Incidents/ Spillages Services at Transnet Pipelines Facilities (Depots and Pump Stations) and the Pipeline Network, on an as and when required basis for a Period of Three Years shall by implication form the basis of such RFQ Response in terms of functionality/expertise.

8. Service Contract

- 8.1 In the event that the Employer accepts the Contractor's RFQ Response, the Employer shall issue to the Contractor a Service Contract pertaining to the specific Services in question, incorporating the terms of the RFQ and the RFQ Response thereof.
- 8.2 A Service Contract shall not enter into force, be legally binding or have any other effect unless:
- 8.2.1 the Service Contract contains all the information required by the form of agreement and contract data form as per the specific Service Contract;
- 8.2.2 the Service Contract has been approved and signed by the authorised representatives of both Parties; and
- 8.2.3 as at the date of the Service Contract, this Agreement has not terminated or expired.

- 8.3 Each Service Contract issued under this Agreement:
- 8.3.1 shall be entered into by the Employer and the Contractor;
 - 8.3.2 forms a separate contract between its signatories; and
 - 8.3.3 shall incorporate the terms of this Agreement, as modified by the relevant Service Contract.
- 8.4 Any amendment to this Agreement agreed by the Employer and the Contractor shall apply to any Service Contract which is current at the date of such amendment and to all Service Contracts entered into after the date of such amendment.

9. Obligation to inform the Employer

- 9.1 The Contractor shall provide any information requested by the Employer in order to verify compliance with this Agreement and/or any Service Contract.
- 9.2 With respect to the performance of the Services, the Contractor shall also inform the Employer without delay of:
- 9.2.1 any substantial changes to its rules or procedures that relate to the management of the Agreement;
 - 9.2.2 any substantial change in its legal, financial, technical, organisational or ownership situation;
 - 9.2.3 any fraud or irregularity which comes to its attention and any situation which may give rise thereto and the measures taken; and
 - 9.2.4 any event which may delay or jeopardize performance of the Services.

10. Dispute

- 10.1 The Parties shall endeavour to reach an amicable settlement of any dispute arising from or in connection with this Agreement.
- 10.2 If the parties fail to reach an amicable settlement, the matter shall be administered by, and resolved finally in accordance with the then current rules published by, the Association of Arbitrators (Southern Africa), by one or more arbitrators appointed in accordance with said rules. The place of Arbitration shall be Johannesburg, and the arbitration proceedings will be conducted in the English language.

- 10.3 The Arbitrator shall be entitled to: -.
- 10.3.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
 - 10.3.2 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
 - 10.3.3 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.
- 10.4 The arbitration shall be held as quickly as possible after it is demanded by one or both Parties.
- 10.5 The decision in the arbitration shall be final and binding on the Parties (whether they are parties to the arbitration or not) and may be enforced by any Court or judicial authority having competent jurisdiction over the Party or its assets against which a judgment is made in the arbitration.
- 10.6 Nothing in this clause shall prevent either Party from approaching a Court of competent jurisdiction for urgent and interim relief if permitted under the applicable law.
- 10.7 By agreeing to arbitration pursuant to this clause, the Parties waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority (save the enforcement of relevant arbitral awards).
- 10.8 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.

11. Confidentiality

- 11.1 Notwithstanding anything to the contrary contained in the Contract or this clause, a Party shall not, directly or indirectly, disclose any Confidential Information relating to the affairs of the other Party to any person, without the prior written consent of the other Party, unless such person is authorized by the other Party or is entitled, by law, to have access to such information.
- 11.2 In the event that a Party is in any doubt as to whether it may disclose or is obligated to disclose, that Party shall consult the other Party prior to disclosing any Confidential Information.

- 11.3 The provisions of this clause survives the termination of the Contract for any reason whatsoever and remains binding on the Parties.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 (fourteen) days after being notified in writing to do so;
 - 12.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 12.1.3 the Contractor has failed to comply with its obligations under this Agreement and/or a Service Contract;
 - 12.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 12.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 12.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or provisional liquidation of that other party (being a company);
 - 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator;
 - 12.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 12.1.9 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 12.1.10 there is a change of control of the other party.

13. Consequences of Termination

- 13.1 On termination (or expiry) of this Agreement, howsoever arising, each Service Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Service Contract, unless terminated earlier in accordance with the terms of such Service Contract.
- 13.2 The termination of any Service Contract shall not affect any other Service Contracts or this Agreement.
- 13.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of this Agreement which existed at or before the date of termination.

14. Notices and legal process

- 14.1 Each Party chooses as its address for all purposes under this Agreement ("**chosen address**"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement ("**notice**"), as follows:

- 14.1.1.1 in the case of **Transnet SOC Limited** to:

address : [●]
telephone number : [●]
fax no : [●]
e-mail : [●]

and is marked for the attention of [●]

- 14.1.1.2 in the case of [●] to:

address : [●]
telephone number : [●]
fax no : [●]
e-mail : [●]

and is marked for the attention of [●]

- 14.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 14.3 Any Party may by notice to the other Parties change its chosen address to another physical address and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.
- 14.4 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible Person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.
- 14.5 Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

15. General and miscellaneous

15.1 Entire Agreement

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

15.2 No Amendments Except in Writing

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

15.3 No Stipulation for the Benefit of a Third Person

Save as is expressly provided for in this Agreement and in particular without limiting the generality of the foregoing, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

15.4 Waivers

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.

15.5 Approvals and Consents

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Parties from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any

rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

15.6 No Partnership

Save as otherwise stated in this Agreement, nothing herein shall constitute or be deemed to constitute a partnership between any of the Parties hereto and none of them shall have any authority to bind the others in any way.

15.7 Cession and Assignment

No Party may cede and/or assign that Party's rights or delegate that Party's obligations in this Agreement without the prior written consent of the other Parties.

15.8 Survival of Obligations

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

15.9 Governing law

This Agreement shall be governed by and interpreted in accordance with the laws of South Africa.

15.10 Cooperation

The Parties shall at all times cooperate and consult with each other in good faith in order to procure the implementation of this Agreement in all its aspects.

15.11 Costs

15.11.1 Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

15.11.2 Any costs, including attorney and own client costs, incurred by a Party arising out of a breach by another Party shall be borne by the Party in breach.

15.12 Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:

15.12.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

15.12.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

15.13 **Counterparts**

This Agreement may be executed in a number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall be deemed to constitute one and the same agreement.

Signed at _____ on _____ 2022

Witness _____ for **TRANSNET SOC LIMITED**

.....

.....

duly authorised and warranting such
authority

Signed at _____ on _____ 2022

Witness _____ for the **CONTRACTOR**

.....

.....

duly authorised and warranting such
authority

SCHEDULE A

LETTER OF TENDER (/ APPOINTMENT)

TENDER FOR THE ESTABLISHMENT OF AN APPROVED LIST FOR THE PROVISION OF REMEDIATION AND REHABILITATION OF ENVIRONMENTAL INCIDENTS/ SPILLAGES SERVICES AT TRANSNET PIPELINES FACILITIES (DEPOTS AND PUMP STATIONS) AND THE PIPELINE NETWORK, ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE YEARS

We have examined the tender documents including the Tender Data, Draft Framework Agreement, all Schedules and Addenda². We have examined, understood and checked these documents and have ascertained that they contain no errors or defects.

Accordingly, we offer our Services, in conformity with this Tender for purposes of pre-qualifying for the Services.

For and on behalf of [●]
Name of Signatory: [●]
Date: [●]
Capacity: [●]
Authority: [●]

SCHEDULE C

SCHEDULE OF DEVIATIONS

Note:

1. To be completed by the Employer prior to award of contract. This part of the agreement would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of negotiation, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

SCHEDULE OF DEVIATIONS

No.	Subject	Details
1		
2		
3		
4		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature of
witness

Date