

Equipment Acquisition Annexure

between

(Bidder)

(bidder logo)

and

Transnet SOC Limited
(trading as Transnet Freight Rail)



("the Customer")

The Parties hereby agree that the Equipment will be acquired according to the terms attached to this Attachment to the MSA.

Signed at:-	_____
Date:-	_____
For and on behalf of (Bidder)	
Signature	_____
Name	_____
Office	_____
I warrant that I have been duly authorised to sign this Attachment	

Signed at:-	_____
Date:-	_____
For and on behalf of Transnet	
Signature	_____
Name	_____
Office	_____
I warrant that I have been duly authorised to sign this Attachment	

AS WITNESSED BY:	
Full Name	Signature
Full Name	Signature

Attachment Number	
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EQUIPMENT ACQUISITION ATTACHMENT

1. STATUS

- 1.1 This Attachment is issued in terms of the Master Service Agreement (MSA) and save where expressly provided to the contrary herein, shall be subject to the terms and conditions of such MSA, including the definitions and rules of interpretation contained therein.

2. INTRODUCTION

- 2.1 The Customer wishes to rent or purchase certain equipment from (Bidder) from time to time which (Bidder) is able to provide. The parties wish to record this arrangement in respect of the aforementioned in writing in this Attachment.

3. DEFINITIONS

In this Attachment the following terms shall have the meanings set out below:

- 3.1 **"Authorised Signatory"** means a signatory referred to in the Rental Schedule hereto;
- 3.2 **"Business Day"** means any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time.
- 3.3 **"Designated Address"** means the address at which the Equipment will be kept, as specified in the Rental Schedule;
- 3.4 **"Effective Date of Rental"** means in respect of each Rental Schedule, the date of delivery of the Equipment ordered by the Customer to the premises of the Customer;
- 3.5 **"Equipment"** means the equipment described in a Rental Schedule together with any software and manuals supplied with that equipment, and includes any part of that equipment or any substituted equipment;
- 3.6 **"Expiry Date of Rental"** means no less than thirty six (36) months from Effective Date or such other future date agreed between the parties in writing and in accordance with the relevant Clauses of this Attachment;
- 3.7 **"Master Service Agreement"** means the 60-month Agreement entered into between (Bidder) and the Customer;
- 3.8 **"Premises"** means the physical address to which the Equipment is delivered or kept as at effective date or any physical location to which the Equipment may be moved after obtaining (Bidder)' written consent;
- 3.9 **"Prime Rate"** means the publicly quoted rate (per cent, per annum) from time to time charged by Service Recipient's bankers current at the time, for similar amounts on unsecured overdraft to its prime customers in good standing in the private sector, as certified by any manager of that bank whose appointment it shall not be necessary to prove, calculated on a daily basis and compounded monthly in arrears.
- 3.10 **"Rental Agreement"** comprises the Master Services Agreement, this Attachment and a particular Rental Schedule, which shall come into effect on the basis set out in clause 6.3
- 3.11 **"Rental Schedule"** means a Rental Schedule substantially in the form of Annexe A hereto;
- 3.12 **"Rental Term"** means in respect of each Rental Schedule the rental term stipulated in the Rental Schedule;
- 3.13 **"Services"** means the services, functions, activities and responsibilities as described in this Attachment and that may evolve during the continued duration of this Attachment and as they may be supplemented, enhanced, modified or replaced in accordance with the terms of this Attachment and includes any management, planning and other services that are ancillary to and appropriate for the performance of any of the foregoing;
- 3.14 **"Service Level"** means a quantitative or qualitative level of service specified in this Attachment as to which Provider's performance of the Services must conform and is a standard for performance of the Services, which sets Provider and Service Recipient expectations, describes the products or services to be delivered, and specifies the metrics by which the effectiveness of service activities, functions and processes will measured, examined, changed and controlled.
- 3.15 **"Signature Date"** means the date of signature of the MSA between the (Bidder) and Transnet Freight Rail.;
- 3.16 **"Software Licence Agreement"** means a written agreement regulating the granting of software licences concluded between the Parties;
- 3.17 **"Working Hours"** means 07:30 to 17:00, Mondays to Fridays, excluding Public Holidays.

4. DURATION

- 4.1 This Attachment shall commence on the Signature Date and continue thereafter for a period of five (5) years, subject to the right of either party to terminate this Attachment on 30 (thirty) days prior written notice, to the other party.
- 4.2 The Customer shall have the right to extend this Attachment beyond the initial five (5) year period.
- 4.3 The Customer shall have the right to extend any Rental Schedule beyond the initial Rental Term.

5. PURCHASING OF EQUIPMENT

- 5.1 From time to time, the Customer may request (Bidder) to sell Equipment to the Customer by delivering to (Bidder) a completed and signed order as per the relevant Annex. The Customer acknowledges that by forwarding a signed order to (Bidder), the Customer authorises (Bidder) to pay the supplier of the Equipment.
- 5.2 Ownership of equipment – once paid, ownership is transferred to the Customer.

6. RENTING OF EQUIPMENT

- 6.1 From time to time, the Customer may request (Bidder) to rent Equipment to the Customer by delivering to (Bidder) a completed and signed order as per the relevant Annex.
- 6.2 **Rental Schedule.** An Authorised Signatory must sign the Rental Schedule. The Customer acknowledges that by forwarding a Rental Schedule for acceptance by (Bidder), the Customer authorises (Bidder) to pay the supplier of the Equipment.
- 6.3 **Acceptance.** (Bidder) will indicate its acceptance of such Customer requests by signing and returning to the Customer a copy of the Rental Schedule. Upon (Bidder) signing the Rental Schedule a Rental Agreement will come into effect between the parties.
- 6.4 **Early delivery.** If Equipment is delivered to the Customer before (Bidder) accepts a Rental Schedule, the Customer must in any event observe the provisions of this Attachment relating to care, insurance and use of the Equipment.

7. RENTAL TERM

- 7.1 **Commencement and duration.** In respect of each Rental Agreement such Agreement shall commence on the applicable Effective Date of Rental and continue for the Rental Term as indicated on the applicable Rental Schedule.
- 7.2 **Early settlement.** The Customer shall be entitled to effect early settlement of any Rental Agreement and (Bidder) shall be entitled to recover all rentals payable hereunder plus such residual value as agreed between the parties upon such request from the Customer.

8. RENTAL AND PAYMENT

- 8.1 **Rental instalments.** In respect of each Rental Agreement, the Customer will throughout the applicable Rental Term pay (Bidder) the rental instalments specified in the applicable Rental Schedule.
- 8.2 **Payment.** All payments in terms of this Attachment shall be made without deductions of any kind and shall be free of exchange, bank costs and other charges. In the event that any dispute arises between the parties, the Customer shall, pending settlement or resolution of such dispute, continue to pay all rentals instalments or other amounts payable in terms hereof on their due dates for payment.
- 8.3 **Time of payment.** The rental instalments are payable monthly and the terms and conditions as set forth in the relevant Clauses of the MSA apply.
- 8.4 **Interim period.** The Effective Date is the 1st of the month following delivery of the Equipment and no interim period shall be applicable.

9. ACQUISITION OF EQUIPMENT

- 9.1 **Delivery.** The Customer will obtain and accept delivery of the Equipment from the supplier of the Equipment.
- 9.2 **Installation and commissioning.** If required, the Customer, at its expense, will arrange for the installation and commissioning of the Equipment. The Customer shall, at its expense, ensure that the installation areas, electrical outlets, connection requirements and access ways are suitable for the installation, electrical connection and commissioning of the Equipment when delivered for installation and thereafter.
- 9.3 **Acknowledgement.**
 - 9.3.1 The Customer acknowledges that it will examine the equipment before accepting it and will notify (Bidder) within 7 days of delivery of any non compliance to the order and specification.

10. USE OF RENTAL EQUIPMENT

- 10.1 **THE CUSTOMER -**
 - 10.1.1 shall at all times keep the Equipment in its possession and control;
 - 10.1.2 shall provide proper storage for the Equipment and protect the Equipment from loss or damage;
 - 10.1.3 take reasonable care in the use of the Equipment;

- 10.1.4 shall keep the Equipment at all times at the Designated Address and shall not remove any of the Equipment or permit it to be removed from the Designated Address without upfront written notification to (Bidder);
- 10.1.5 shall only allow competent and properly trained and qualified persons to operate the Equipment and only for the purpose for which the Equipment was designed and/or intended;
- 10.1.6 keep the Equipment in good working order and properly operated;
- 10.1.7 shall not attempt to sell, dispose of, encumber in any way, or part with possession of the Equipment without (Bidder)' prior written consent;
- 10.1.8 shall not alter any identifying markings or serial numbers on the Equipment;
- 10.1.9 will allow (Bidder) to inspect the Equipment at any reasonable time upon reasonable notice to the Customer;
- 10.1.10 will, upon signature of this Attachment and thereafter from time to time upon any change of Designated Address, notify (Bidder) in writing of the details of the Designated Address.

11. OWNERSHIP OF RENTAL EQUIPMENT

- 11.1.1 **Ownership.** The Customer acknowledges that the Equipment will remain the property of (Bidder) and/or its successors or assigns, and that the Customer only has the right to use the Equipment.
- 11.1.2 **Movable property.** The Customer further acknowledges and agrees that the Equipment is movable property and will not accede or become permanently attached to any Designated Address or other property asset. On cancellation or termination of any Rental Agreement for whatever cause, the relevant Equipment shall be returned to (Bidder) without compensation to the Customer. The Customer indemnifies (Bidder) against any costs, loss or liability that (Bidder) may reasonably incur if the removal of the Equipment is required.

12. MAINTENANCE AND WARRANTEE

- 12.1 **Service Agreement.** At the request of the Customer, (Bidder) will maintain the Equipment according to the commitments set out in the proposal to the Customer for the provision of these services and in accordance with the Customer requirements detailed in tender HOAC-HO-37603.
- 12.2 **No modifications without consent for the duration of the 36-month warrantee period.** The Customer shall not affect or allow any third parties to affect any alterations or modifications ("modifications") to Equipment without (Bidder)' prior written consent. If the Customer performs any modifications with or without (Bidder)' consent, (Bidder) shall not be liable to compensate the Customer for such modifications.
- 12.3 **UPGRADES**
 - 12.3.1 **Right.** Subject to anything to the contrary contained in this Attachment the Customer shall have the right, subject to the provisions of clause 12.3.2, to upgrade parts of the Equipment during the currency of this Attachment.
 - 12.3.2 **Conditions.** Such upgrade will be subject to the following conditions -
 - the Customer shall only be entitled to upgrade the hard drive, the memory, the monitor, the key-board, and the processor, if such processor is chip-upgradeable;
 - the upgrade may only be conducted by (Bidder) or its agents;
 - the cost of upgrade will be as reflected in agreed pricing;
 - for rental Equipment, upgrades will be reflected on its own Rental Schedule on a Rental Term equal to the remainder of the Rental Term of the Equipment on which the upgrade has been affected;
 - the Customer may only call for an upgrade if it is not in breach of any of its obligations under this Attachment or any Rental Agreement;
 - the Customer shall return all replaced components / old Equipment to (Bidder);
 - (Bidder) shall be entitled to withhold any upgrade until such time as the Customer has signed all documents which (Bidder) considers to be necessary, in its discretion, for the upgrade to occur.

13. INSURANCE OF RENTAL EQUIPMENT

- 13.1 Each party will ensure that the Equipment is insured against loss, fire, accident, theft and damage, for an amount equal to the full insurable value of the Equipment with a reputable insurer whilst the equipment is in their care.

14. LOST, STOLEN OR DAMAGED RENTAL EQUIPMENT

- 14.1 **Consequences.** If any of the Equipment is lost, stolen or damaged beyond economic repair, the Customer must immediately notify (Bidder) in writing and the parties may elect to either:—
 - 14.1.1 Early terminate the applicable Rental Schedule, in which case the Customer shall remain liable for the payment of all payments outstanding; or

- 14.1.2 require the Customer, at its cost, to replace such Equipment with equipment of a like nature, approved by (Bidder).
- 14.2 **Replacement equipment.** Title in respect of such replacement equipment will vest in (Bidder) from the date on which it is delivered to the Customer and this Attachment will continue with respect to the replacement equipment as if it was the original Equipment. The Customer agrees and undertakes to accept delivery of such replacement equipment on (Bidder)' behalf with the intention that (Bidder) will become the owner of such replacement equipment. The Customer agrees to enter into an amended Rental Schedule recording the replacement equipment.

15. RETURN OF RENTAL EQUIPMENT

- 15.1 **Decommissioning.** At the expiration of the renting of the equipment, (Bidder) shall decommission the equipment. Decommissioning will be managed as an IMAC and will be for the Customer's account.
- 15.2 **Collection and Removal.** Notwithstanding any other provision in the Master Rental Agreement, (THE BIDDER) shall arrange for the collection and return of the solution at its own cost at the expiry or earlier termination of a Rental Agreement, if Transnet Freight Rail has given notice that it does not intend to continue leasing the solution.
- 15.3 **Make good charges and replacement.** To the extent that any Equipment is in a condition worse than that which would be occasioned by fair wear and tear, the Customer shall be liable for all reasonable costs of repair and refurbishment. Provided that it is not possible for the Customer to return the Equipment to (Bidder) due to loss or destruction in accordance with the provisions of this Attachment, then the Customer must immediately, at the expiration of the applicable Rental Term or at the earlier termination of the Rental Attachment in terms of this Attachment and at the Customer cost, deliver to (Bidder) replacement equipment of a similar nature to the Equipment, approved by (Bidder).
- 15.4 **Damages to returned equipment.** Reasonable costs of repair and refurbishment to returned Equipment shall be limited to the LCD, monitor, motherboard or hard-drive, which may not exceed 15% of the total cost of capital. Only damage beyond repair to the LCD, monitor, motherboard or hard-drive will be paid for in terms of this clause.
- 15.5 **Definition of Residual Value.** For purposes of this clause 15, Residual Value means the financial interest which (Bidder) acquires in the Equipment at the inception of a Rental Agreement and retains for the Rental Term thereof. Alternatively, (Bidder) may, in its sole discretion, accept payment of an amount equal to the Residual Value instead of delivery of such replacement equipment. A certificate duly completed by (Bidder)' auditors indicating the amount of the Residual Value will be prima facie evidence of the contents thereof.

16. CONTRACT GOVERNANCE

- 16.1 In order to facilitate the smooth and effective management of the relationship, the parties will implement and adhere to the contract governance procedures set out in the Annex hereto.

17. EQUIPMENT WARRANTIES

- 17.1 (Bidder) will provide full maintenance with regard to the Equipment as contemplated in clause 12.

18. END OF RENTAL TERM

- 18.1 **The Customer option.** At the conclusion of the applicable Rental Term, the Customer may either return the Equipment or request (Bidder) to agree to extend the applicable Rental Term or vary the Equipment rented. Extension of the initial Rental Term shall be charged at the reduced rates as set out in the accepted Annexure D Pricing Schedule.
- 18.2 **Return period.** At the end of the rental period for any solution, the Customer will have a maximum of a 4-week period within which to return the solution to (THE BIDDER) during which no charges will be levied by (Bidder).
- 18.3 **Extension of Warranty.** Transnet Freight Rail shall have the option to extend the warranty, and negotiate the basis of this extended warranty during the 90 day period prior to expiry of the initial rental period.
- 18.4 **Notification.** The Customer must in either case give (Bidder) written notice of the Customer intention at least 30 (thirty) Days prior to the expiry of the applicable Rental Term. If the Customer does not give (Bidder) written notice within the above-mentioned period the Customer agrees that, unless (Bidder) otherwise notifies the Customer in writing, the applicable Rental Term will be automatically extended on a month-to-month basis.

19. CESSION AND ASSIGNMENT

- 19.1 Notwithstanding the provisions of the MSA, the parties shall be entitled, with the consent of the other party, cede, assign, transfer or otherwise make over any of its rights under this Attachment to a third party.

AUTHORISED SIGNATORIES

The following specific Transnet Freight Rail employees set out in Table 1 Authorised Signatories below, the people holding or being held out to hold any of the positions specified in the relevant table below and such other persons whose names and specimen signatures are advised in writing to (Bidder) by the Customer from time to time are Authorised Signatories of the Customer for all purposes arising in connection with this Attachment.

Table 1 Authorised Signatories

1. Specific Transnet Freight Rail employees authorised as Authorised Signatories

Name

Title Position
FREIGHT RAIL

Specimen Signature (above)

Name

Title Position
FREIGHT RAIL

Specimen Signature (above)

Such other persons whose names and specimen signatures are advised in writing by the Customer from time to time.

GOVERNANCE STRUCTURE

1. SERVICES STEERING COMMITTEE

- 1.1 **Steering Committee.** Management of the relationship between the parties shall vest in a steering committee to be constituted in accordance with the provisions of clause 1.3, within 30 (thirty) days of the effective date of this Attachment, or such longer period as the parties may agree in writing.
- 1.2 **Ambit.** The steering committee shall be responsible for monitoring the rental and procurement of the Equipment in terms of this Attachment, subject to the further terms and conditions herein set out.
- 1.3 **Constitution of Steering Committee.** The steering committee shall be constituted and shall function in accordance with the following provisions -
 - 1.3.1 The steering committee shall comprise representatives from each of the participating parties. Such representatives must be mandated appropriately and shall be authorised to make decisions at steering committee;
 - 1.3.2 The chairperson of the steering committee is elected by the members and may be replaced by the steering committee from time to time. The chairman shall not be entitled to a second or casting vote;
 - 1.3.3 Any appointment, removal or replacement of representatives pursuant to the above provisions shall be by written notice to the other parties and shall be operative as soon as such notice is received by the other parties;
 - 1.3.4 The steering committee may from time to time co-opt additional persons to sit on the steering committee, whether in a voting or monitoring capacity;
 - 1.3.5 The steering committee shall meet on at least a monthly basis during the currency of this Attachment and, in addition, the steering committee shall meet upon the request on reasonable notice of any party or to conduct other *ad hoc* function contemplated in this Attachment. The time and place for meetings shall be determined by the members;
 - 1.3.6 Duly appointed alternate representatives shall be entitled to attend meetings of the steering committee and shall have the right to speak thereat but no alternate shall be entitled to vote if his principal is present at that meeting;
 - 1.3.7 A quorum for a meeting of the steering committee shall be two representative each from Lenovo and (Bidder) and representation from Transnet Freight Rail Corporate and at least 2 other Transnet Freight Rail Operating Divisions;
 - 1.3.8 Each member of the steering committee shall be entitled to one vote;
 - 1.3.9 Questions arising at meetings of the steering committee shall be decided by consensus;
 - 1.3.10 The parties shall ensure that all areas of the contract (architecture, DCE etc.) are duly represented to ensure meaningful feedback.
- 1.4 **Minutes of Meetings.** All business transacted at meetings of the steering committee shall be recorded and signed by a member of the steering committee representing each of the parties and the minutes so kept shall be circulated to the members of the steering committee within 14 (fourteen) days of each meeting. Such minute book shall at all times be available for inspection by the members of the steering committee or their duly authorised agents who shall be entitled to take copies thereof or to make extracts there from.

Rental Schedule

between

(BIDDER)

and

TRANSNET SOC LIMITED
trading as "Transnet Freight Rail"

Registration number 1990/000900/06
("the Customer")

1. THE ATTACHMENT DETAILS

Rental Schedule Number	
Master Equipment Rental Attachment Number	

2. APPLICABLE DOCUMENTS

- 2.1 The Customer offers to rent from (Bidder) the Equipment described below. By signing this Rental Schedule (Bidder) agrees to rent the Equipment to the Customer at the rental and for the period set out below and subject to the terms and conditions of -
- 2.1.1 the Equipment Rental Attachment;
 - 2.1.2 the Master Attachment; and
 - 2.1.3 this Rental Schedule.

3. THE EQUIPMENT

Description of Equipment	Serial Numbers

4. THE DESIGNATED ADDRESS

5. THE TERM

Effective Date	
Term (Number of months of rental)	

6. RENTAL INSTALLMENTS

The rental instalment specified in the table below is payable quarterly/monthly on each payment date

Rental Instalment	R	Payment Date	
VAT	R		
Total	R		

7. PAYMENT

In accordance with clause 8.2 of the Equipment Rental Attachment, the Customer will deposit payment by electronic transfer into the bank account of (Bidder), the current details which are detailed in the table following.

Bank	Branch	Account Number

8. INSURANCE

Insurance Required (Please tick appropriate box)	Yes		No	
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(Bidder) Insurance Required (Please tick appropriate box)	Yes		No	
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PLEASE TAKE NOTE OF THE FOLLOWING –

9. PRIOR DELIVERY

Please notes that if the above mentioned Equipment is delivered to the Customer before (Bidder) accept this Rental Schedule, the Customer must in any event observe the provisions of the rental Attachment relating to care, insurance and use of that Equipment as if the rental Attachment were applicable thereto.

10. AUTHORITY

The Customer irrevocably acknowledge and agree that the forwarding of this Rental Schedule for acceptance by (Bidder) shall constitute an irrevocable authority to (Bidder) to pay the supplier of the Equipment referred to in this Rental Schedule in order for (Bidder) to procure that Equipment.

Signed at:-	_____
Date:-	_____
	For and on behalf of (Bidder)
Signature	_____
Name	_____
Designation	_____
	I warrant that I have been duly authorised to sign this Attachment

Signed at:-	_____
Date:-	_____
	For and on behalf of Transnet Freight Rail
Signature	_____
Name	_____
Designation	_____
	I warrant that I have been duly authorised to sign this Attachment

AS WITNESSED BY:	
Full Name	Signature
Full Name	Signature