



PowerCom
(PTY) LTD

MEMORANDUM OF LEASE AGREEMENT

MAGRIETHA VAN DER WESTHUIZEN

A natural person whose principal place of business situated at Plot Seeheim,
Republic of Namibia.

(Herein represented by Magrietha van der Westhuizen in her capacity as the owner and
warranting themselves to be duly authorised thereto)

(Hereinafter referred to as "the Lessor")

And

POWERCOM (PTY) LTD

a Company with registration number 2000/535 established and incorporated in terms of the
relevant company laws of the Republic of Namibia and with its principal place of business
situate at 140 NPTH Building No 4, Julius K Nyerere Street, Southern Industrial Area,
Windhoek, Republic of Namibia

**(Herein represented by Beatus Amadhila in his capacity as the Chief Executive Officer
and warranting himself to be duly authorised thereto)**

(Hereinafter referred to as the "Lessee")

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PREAMBLE

WHEREAS as the Lessee is desirous of renting the premises from the Lessor for purposes of setting up telecommunications base station;

AND WHEREAS the Lessor is willing to let the premises to the Lessee

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1. In this Agreement, unless the context indicates otherwise:-

1.1.1. "**Agreement**" means the entire content of this written document being this lease agreement entered into between the Parties, including addenda; annexures; plans; and/or the likes which have been signed and initialled by the Parties or be incorporated herein by reference, as relevant thereof;

1.1.2. "**Associate**" in regulation to the Lessee means an entity which is for the time being;

1.1.2.1. a subsidiary or holding company of the Lessee within the meaning ascribed to such terms in the Companies Act 61 of 1973; or

1.1.2.2. a subsidiary or holding company of the Lessor.

1.1.3. "**Base Transceiver Station Terminal**" means a mobile telecommunication station with all its ancillary and supporting equipment, building and civil works and personal peripheral equipment hereinafter referred to as BTS.

1.1.4. "**Commencement Date**" means the commencement date of the lease as set out in the annexed Schedule, which is annexed hereto and forms part of this lease agreement;

1.1.5. "**Confidential Information**" of any Party shall mean any information disclosed by that Party to the Receiving Party prior, during and after the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this agreement;

1.1.6. "**Equipment**" means any property that can easily be moved from one location to another, and/or is collapsible and specifically excludes immovable property or immovable, such as buildings and includes but it is not limited to installations, fences, antennae, containers, structures together with any integral machinery that forms part thereof;

1.1.7. "**Lessor**" means Magrietha van der Westhuizen as identified in the heading "Parties to this Agreement";

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1.1.8. "Lessee" means PowerCom (Pty) Ltd as identified in the heading "Parties to this Agreement

1.1.9. "Lease" means the lease of the premises as in terms of this Agreement;

1.1.10. "Parties" means the parties to this Agreement, being the Lessor and Lessee and "Party" means any one of them;

1.1.11. "Premises" means the portion of the property selected by the Lessee for the purpose of this agreement, in accordance with the Schedule.

1.1.12. "Property" means the Lessor's property upon which the premises are situated as prescribed by the Schedule;

1.1.13. "Signature Date" means the date when the last of the Parties hereto have executed and signed this Agreement;

Interpretation

1.2. In this Agreement:

1.2.1. Expressions in the singular also denote the plural, and *vice versa*;

1.2.2. words and phrases denoting natural persons refer also to juristic persons, and *vice versa*, and

1.2.3. pronouns of any gender include the corresponding pronouns of the other genders.

1.3. In this Agreement, unless the context otherwise indicates, a reference to:

1.3.1. this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision;

1.3.2. a clause, unless the context otherwise indicates, is a reference to a clause of this Agreement;

1.3.3. a statute or statutory provision includes a reference to:-

1.3.3.1. any applicable statute or statutory provision as modified or re-enacted (or both) before or after the Signature Date; and

1.3.3.2. any subordinate legislation made under any applicable statute or statutory provision before or after the Signature Date;

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- 1.3.4.a person includes a reference to any natural person, firm, body corporate, unincorporated association or partnership, joint venture, trust and unincorporated association, the state or local government or regulatory department, body, instrumentality, agency, minister or the authority having jurisdiction over any of the Parties;
- 1.3.5.a reference to a person includes a reference to that person's legal personal representatives, executors, administrators, successors and substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- 1.3.6.In gender includes all genders;
- 1.3.7.time is a reference to Namibian time as per the *Namibian Time Act, 2017*, and the following construction shall apply to time matters:-
- 1.3.7.1. if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
- 1.3.7.2. if the time for performing an obligation under this Agreement expires on a day that is not a business day, time will be extended until the next business day;
- 1.3.7.3. a reference to a "year" means a period of twelve (12) consecutive months;
- 1.3.7.4. a reference to a "month" is a reference to a calendar month, and more specifically, (i) in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month, and (ii) in any other context, one of the twelve months of the calendar;
- 1.3.7.5. a reference to a "day" is a reference to any day;
- 1.3.7.6. a reference to a "business day" is any day other than a Saturday, Sunday or public holiday in Namibia.
- 1.4. Any provision of this Agreement imposing a restraint, prohibition, or restriction on the Parties shall be so construed that the Parties are not only bound to comply therewith, but are also obliged to procure that the same restraint, prohibition, or restriction is observed by any third party engaged by acting under the authority or with the written consent of the Parties.
- 1.5. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause only, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this clause 1.

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- 1.6. Any substantive provisions contained in a definition clause shall create substantive obligations.
- 1.7. Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. LETTING AND HIRING

Subject to the terms and conditions of this Agreement, the Lessee hereby lease the premises from the Lessor.

3. DURATION

Notwithstanding the Signature Date of this Agreement, the agreement shall commence when construction starts and shall endure for a period of 9 years and 11 months, unless terminated earlier in accordance with the provisions of this Agreement.

4. USE OF PREMISES

General

- 4.1. The Premises shall be solely utilised for erection and maintenance of a mobile telecommunication network tower, BTS and for no other purpose whatsoever, unless the Lessor's prior written consent is obtained.
- 4.2. The Lessee shall conduct its Business at the Premises with due regard to the business and interests of the Lessor, and shall not do, nor cause, nor permit anything to be done which is or may become a nuisance to the Lessor, other neighboring tenants or the public.

The Lessee shall be entitled at its own expense, to-

- 4.3. install all or any equipment and/or erect structures on premises, including on the rooftop;
- 4.4. erect, maintain, renew, and replace any equipment required for the purpose referred to in clause 4.1 as well as all required supporting structures upon the premises, and to remove at any time;
- 4.5. affix fittings and fixtures, cables, piping, wiring, conductors and other equipment is kept as well as all required support structures upon the premises, and to remove at the same time;
- 4.6. modify structural elements on the premises after approval by the lessor, introduce innovations, improvements, additions, substitutions of any property equipment and modifications to roof loads (according to generally accepted technical specifications) whatever is necessary to declare the use of the premises;

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- 4.7. It is further recorded that only persons appointed by the Lessee shall be entitled to supply and install in terms of this clause, the necessary wiring and earthing systems;
- 4.8. Build BTS including necessary foundations and underground works;
- 4.9. The Lessor shall at all times allow the Lessee or its employees, agents or contractors to bring, lay and relay utility power, cables, pipes, telephone and earth wires and other equipment across the property to the premises, and in general shall allow such persons access to the premises 24 hours a day, 7 days a week.
- 4.10. All the afore going installation, and any decommissioning and removal thereof, shall be undertaken at the sole discretion of the Lessee and having given notice to the Lessor or obtaining the Lessor's permission.

Licences and Approvals, Statutes, Regulations and By-Laws

- 4.11. The Lessee shall be required to hold any and all licences and permits that may be required under the laws of Namibia for the conduct of its Business, which licences shall be the duty of the Tenant to obtain.
- 4.12. The Lessee acknowledges and agrees that it shall not be exempted from compliance with any statute, regulation or by-law imposing duties or obligations upon it as Tenant or affecting the use of the Premises or the Property, or the nature of any Improvements that may be erected thereon. The Lessee shall therefore not be entitled to claim relief from any burden or infringement of its rights under this Agreement resulting from the operation of any such statute, regulation or by-law or any action lawfully taken thereunder by any local or other competent authority.

5. RENT AND OTHER CHARGES

- 5.1. The Tenant shall pay to the Lessor a monthly Rental in the sum of N\$ 1500 (One Thousand Five Hundred Namibian Dollars) per month (Exclusive of Value Added Tax) in accordance with the Schedule, in advance on or before the first day of each month.
- 5.2. In addition to paying the rent, the Lessee shall pay the cost of electricity consumed on the site directly to whomsoever shall have levied such charges.
- 5.3. The Lessee shall be entitled at its own cost to upgrade the electricity supplied to the premises to the extent acceptable to the Lessor, which consent shall not be reasonably withheld or delayed.
- 5.4. All costs of other services supplied to the premises, shall likewise be for the account of the Lessee, while the Lessor is liable to pay for rates and taxes and refuse removal charges.

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6. SUBLEASE/SITE SHARING

- 6.1. The Lessee shall be entitled to sublease part or whole of the land to the other entities or suppliers of telecommunication services to use the land or equipment thereon on the terms not in conflict with this agreement.
- 6.2. The Lessee shall be entitled, and with the Lessor's prior consent, to share or allow the occupation of the land as well as facilities thereon by a company or entity associated with the Lessee.
- 6.3. The Lessor has the right to apply and join the tower built by the Lessee provided that;
- 6.3.1. the Lessor applies for the co-location through the regular PowerCom site sharing procedures
- 6.3.2. the Lessor submits a proper structural analysis produced by a registered structural engineer on the additional load of the added equipment and antennas to the Lessee
- 6.3.3. the Lessee approve the structural analysis
- 6.3.4. the principle "First come, First served" applies to this agreement
- 6.3.5. the requested height or space is not occupied or reserved by another co-locator.

7. INDEMNITY

- 7.1. The Lessee shall be liable for and indemnify the Lessor against any loss or damage that any entity or supplier referred to in clause 6, which is caused to the Lessor's equipment if any and installations on the property in the exercise of its rights by the conferred by the Lessee.
- 7.2. The parties agree that the Lessee, for purpose of using any structure and/or equipment constructed and/or erected, shall require the supply of electric current. The Lessee shall pay for any costs in relations to the installation of supply. It is further recorded that only persons appointed by the Lessee shall be entitled to supply and install, in terms of this clause, the necessary wiring and earthing systems for equipment and/or structure constructed after consenting by the Lessor to the proposed works.

8. CONTRACTING WITH COMPETITORS

The Lessor may contract with any other supplier of telecommunication service provider in respect of its property without the Lessee's prior consent. The Lessor however undertakes that any existing or future supplier or telecommunication service provider, if any, and its equipment shall not limit or obstruct the functionality of the Lessee's equipment or the access to and exit from the premises and the Lessee's site and installations thereon.

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9. LESSEE'S RIGHTS OF ENTRY AND CARRYING OUT OF WORKS

The Lessee's representatives, agents, servants and contractors may at all reasonable times, enter the premises and make use of the necessary access roads in order to inspect any part of the Site, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of the Lessee but the Lessee shall ensure that this right is exercised with due regard for and a minimum of interference with, the beneficial enjoyment of the owners of all adjacent properties and those in occupation thereof.

10. OWNERSHIP

Any equipment and/or structures constructed and/or erected in terms of clause 4 shall remain the property of the Lessee, and the parties agree that same shall at all times be regarded as and constitute moveable property, and that the Lessee shall be obliged, at the termination of this Agreement, for whatever reasons, to remove such equipment within a period of 90 (ninety) days after termination of the contract at its own cost.

11. SECURITY

The Lessee and the Lessor shall co-operate with each other and jointly at all times ensure that the entrance to the premises is controlled and shall be locked when the premises are unoccupied.

12. WARRANTIES

- 12.1. The Lessor warrants that he is the registered owner of the property and has exclusive title and rights thereto and that there is no third party rights, real or personal liens, limitations or constraints of any nature whatsoever which may exclude or limit the Lessee's rights under this Agreement.
- 12.2. The Lessor will avoid any act or use of the premises by third parties that may in one or any other way affect the proper functioning of the Lessee's equipment and infrastructure. The Lessee will avoid any act or use of the equipment and infrastructure that will disturb the normal functioning of the existing Lessor's equipment. In case of disturbance or interference caused by either Party, the disturbing Party shall take all necessary measures in order to correct the disturbance and restore the normal functioning of the affected equipment.

13. ALTERATIONS

- 13.1. Upon termination of the agreement, as proprietor of the equipment and/or structures, the Lessee will retain the title to the equipment and/or structures (all the elements and components of the Base Station) and shall, within a reasonable period and its own costs, remove its personal property and fixtures, except for underground supporting structures (if any have been installed) and restore the premises to its original

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condition, normal wear and tear excepted. The Lessor shall take any necessary action to ensure that the equipment and/or structures be removed by the Lessee or by any person designated by the Lessee.

- 13.2. The Lessor shall not change, move, alter or interfere with any installation construction, erection, structure or equipment in or upon the premises constructed and/or erected by the Lessee, nor shall the Lessor attach any electrical appliances to the electric system of the supplied premises allocated by the Lessor, supplied for the purpose if any such installation, construction, erection, structure or equipment interfere, alter or do any repairs to the electric system referred to above, without the prior written consent of the Lessee first having been obtained, and the Lessor shall not appoint any person other than such persons that may from time to time be approved by the Lessee for the execution of any such works, whether in relation to wiring, the repair of equipment or the joining of cabling or otherwise.

14. BREACH

Should the Lessee default in any payment due under this Agreement or be in breach of its terms in any other way, and fail to remedy such default or breach within 14 days after receiving a written demand that it be remedied, the Lessor shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Lessor under the circumstances, to cancel this Agreement without further notice with immediate effect.

15. CESSION

The Lessor shall not for whatever reason during the currency of this agreement cede, assign, transfer or make-over any of the Lessee's right in terms of this lease, nor give up occupation or possession of the premises or any portion thereof, without the Lessee's prior consent, which consent shall not be unreasonably withheld. Having obtained the Lessee's consent, the Lessor undertakes to have any obligation under this Agreement transferred and delegated to the transferee's party and shall be jointly responsible for the aforesaid obligation together with Lessee.

16. CONFIDENTIALITY

Notwithstanding the cancellation or termination of this Agreement, no Party ("Receiving Party") shall, at any time after the conclusion of this Agreement, disclose to any Person or use in any manner whatsoever the other Party's ("Disclosing Party") Confidential Information or the existence and contents of this Agreement, provided -

16.1 that the Receiving Party may disclose the Disclosing Party's Confidential Information and the existence and contents of this Agreement -

16.1.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party);

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16.1.2 to permit the use thereof by its Affiliates, employees, representatives and professional advisers (and the employees, representatives and professional advisers of its Affiliates) to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such Affiliate, employee, representative or professional adviser (or employee, representative or professional adviser of an Affiliate) of such confidential or other information for any other purpose shall constitute a breach of this Clause 13 by the Receiving Party; and

16.2 the provisions of this Clause shall cease to apply to any Confidential Information of any Party that -

16.2.1 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this Clause.

Information received by the Receiving Party from any other Person who did not acquire such Confidential Information subject to any duty of confidentiality in favour of another Person; or was known to the Receiving Party prior to receiving it from the Disclosing Party.

17. FORCE MAJEURE

17.1 If either Party is prevented from carrying out any of its obligations in terms of this Agreement as a result of an act of God, strike, fire, riot, war (whether declared or not), power outages, embargoes, international restriction, any court order or any requirements of any other competent authority, or any other circumstances whatsoever which are not within the reasonable control of that Party ("Affected Party"), including any event of force majeure under the Agreement, to the extent applicable, then to the extent that and for so long as the Affected Party is so prevented from performing its obligations in terms of this Agreement, this Agreement will be deemed to have been suspended.

17.2 As soon as the Affected Party becomes aware that an act of force majeure is likely to cause a suspension of this Agreement, it shall give notice in writing to the other Party, estimating the approximate duration of such suspension. The estimate shall not be binding, and the Affected Party shall give notice to the other Party as soon as the force majeure ceases to operate.

17.3 Should an event of force majeure continue for more than 30 (thirty) days after the date of the notice, then the Affected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 14 (fourteen) days written notice to that effect to the other Party.

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18. GOVERNING LAW AND ARBITRATION

- 18.1 This Agreement shall be governed by, construed and interpreted in accordance with the Laws of the Republic of Namibia.
- 18.2 Should any dispute arise between the Parties in connection with the interpretation or application of the provisions of this Agreement or if breach or termination or the validity of any documents furnished by the Parties pursuant to the provisions of this Agreement, that dispute will, unless resolved amongst the Parties be referred to and be determined by arbitration in terms of this clause. Any matter related to arbitration not dealt with under this clause shall be governed by the Arbitration Act, 1965 (Act 42 of 1965).
- 18.3 Any Party to this Agreement may demand that a dispute be determined in terms of this clause by written notice given to the other Party.
- 18.4 This clause will not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decisions of the arbitrator.
- 18.5 The arbitration will be held—
- 18.5.1 In Windhoek,
 - 18.5.2 With only the Parties and the legal and other representatives of the Parties to the dispute being present; and
 - 18.5.3 In accordance with the formalities and procedures settled by the arbitrator and may be held in an informal and summary manner on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible.
 - 18.5.4 The arbitrator will be acceptable to both Parties and if the matter in dispute is principally—
 - 18.5.4.1 A legal matter, a practising Legal Practitioner of at least 10 (ten) years' standing;
 - 18.5.4.2 An accounting matter, a Chartered Accountant of at least 10 (ten) years' standing;
 - 18.5.4.3 Any other matter, an independent person.
- 18.6 Should the Parties to the dispute fail to agree whether the dispute is principally legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed a legal matter.
- 18.7 Should the Parties to the dispute fail to agree on the appointment of the arbitrator, the then President of the Council of the Law Society of Namibia or his/her nominee, will be appointed as arbitrator.
- 18.8 The decision of the arbitrator will be final and binding on the Parties to the dispute and may be made an order of any court whose jurisdiction the Parties are subject to at the instance of any of the Parties to the dispute.
- 18.9 The arbitrator will be entitled to make an award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion

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may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on an attorney and own client scale, and his own fees.

18.10 The provisions of this clause—

18.10.1 Constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

18.10.2 Are severable from the remainder of this contract and will remain in effect despite termination of or invalidity for any reason of this Agreement.

19 DOMICILIA AND NOTICES

19.1 The parties choose as their *domicilia citandi et executandi* for all purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement (collectively, "notice"), at the following addresses:

19.1.1 The Lessor: Magrietha van der Westhuizen
Plot Seeheim
P.O. Box 1284
Keetmanshoop
Tel: +264 81 876 8777

19.1.2 The Lessee: POWERCOM (PTY) LTD
140 NPTH Building Nr. 4
Julius K Nyerere Street
Southern Industrial Area
Windhoek
Tel: +264 61 209 2090
E-mail: info@powercom.na

19.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other physical address and/or its telephone number and/or its e-mail address as cited.

19.3 Unless the contrary is proved by the addressee, any notice given and any payment made by any Party to the other which is—

19.3.1 Delivered by hand during normal Business Hours of the addressee's *domicilium* for the time being, shall be presumed to have been received by the addressee at the time of delivery; and

19.3.2 No notice sent by normal post shall be regarded as proper notice in terms of this agreement.

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DATED and SIGNED at WINDHOEK on this 24 day of FEBRUARY 2022 in presence of the undersigned witness:

AS WITNESSES:



PowerCom (Pty) Ltd
herein duly authorised on behalf of the Lessee
Mr Beatus Amadhila
Chief Executive Officer

SIGNED at on this day of2022
in presence of the undersigned witnesses:

AS WITNESSES:

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*Magrietha van der Westhuizen
MAGRIETHA VAN DER WESTHUIZEN
herein duly authorised on behalf of the
Lessor

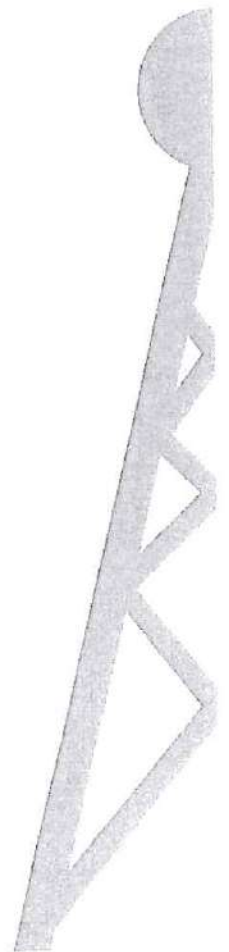


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SCHEDULE

Site ID : NA
Site Name: Seeheim
Owner: Magrietha van der Westhuizen

1. Description on the Premises : Greenfield
2. Commencement Date : When construction starts
3. Contract Period : 9 years and 11 months
4. Rental : N\$ 1500.00 per month
5. Escalation : NCPI
6. Method of Payment: **Monthly in advance into Lessor's bank account.**
7. Bank Details :
Name of Account Holder: **Magrietha van der Westhuizen**
Name of Bank : **Standard Bank Namibia**
Account Number : **60000290164**
Branch Code : **080371**



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