

**MEMORANDUM OF LEASE AGREEMENT**

made and entered into and between:

**ROADS CONTRACTOR COMPANY LTD**

**Registration Number: 2000/107**

A statutory company duly constituted and incorporated in terms of section 2 of the Roads Contractor Company Act, 1999 (Act 14 of 1999), with its registered offices situated at  
RCC Head Office, No 140 Julius Nyerere Street

WINDHOEK

and of

Private Bag 13373

WINDHOEK

REPUBLIC OF NAMIBIA

Herein represented by **Ms Maria Nakale**,  
in his capacity as **INTERIM CHIEF EXECUTIVE OFFICER**

He being duly authorized thereto

(Hereinafter referred to as "**the LESSOR**")

**AND**

**Mr. Austin Helao Elindi t/a Topenergy**

**Identity Number: 94051000141**

PO Box 98412

Pelican Square

Windhoek

REPUBLIC OF NAMIBIA

(hereinafter referred to as "**the LESSEE**")

(collectively referred to as "**the parties**")

**WHEREAS** THE LESSEE IS DESIROUS OF RENTING THE HEREINAFTER MENTIONED PARTIAL VIRGIN LAND WITHIN THE PROPERTY OF AND LOCATED AT RCC KATIMA MULILO DEPOT, CAPRIVI REGION FOR PURPOSE OF UTILISATION BY THE LESSEE AS A REFUELING TRUCK STOP AND NO OTHER PURPOSE OR WHATSOEVER

**WHEREAS** THE LESSOR IS WILLING TO LET THE PREMISES TO THE LESSEE ON THE TERMS AND CONDITIONS AS SET OUT IN THIS AGREEMENT;

**NOW THEREFORE IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement and any appendixes thereto, unless inconsistent with or otherwise indicated by the context –

- |       |                                |   |
|-------|--------------------------------|---|
| 1.1.1 | <b>"Agreement"</b>             | means this Agreement of Lease and any annexures thereto;  |
| 1.1.2 | <b>"the Commencement Date"</b> | means, notwithstanding the Signature Date,  |
| 1.1.3 | <b>"day"</b>                   | means any day of the week, excluding Saturdays, Sundays and officially proclaimed Namibian holidays;  |
| 1.1.4 | <b>"the premises"</b>          | means a portion of the Lessor's Premises situated at Katima Mulilo (virgin land with limited improvements) thereon;   |
| 1.1.5 | <b>"the Termination Date"</b>  | means, subject to the provisions of paragraph 3 hereunder,  |
| 1.1.6 | <b>"Signature Date"</b>        | means the date on which the last party to this Agreement signs the same.  |
| 1.1.7 | <b>"Year"</b>                  | means a period of consecutive months, and "yearly" refers to a year commencing on the date on which this lease came into operation or any anniversary of that date; |

1.2 In this Agreement, unless a contrary intention clearly appears –

1.2.1 words importing –

- (a) any gender includes the other genders;
- (b) the singular includes the plural and *vice versa*; and
- (c) natural persons include created entities (corporate or non-corporate) and *vice versa*.

1.3 Any provision of this lease imposing a restraint, prohibition or restriction on the Lessee shall be so constructed that the Lessee is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restraint is observed by everybody occupying or entering the Premises.

**2. LEASE PERIOD**

2.1 The LESSOR hereby lets the premises to the LESSEE, subject to the provisions of this Agreement.

**Board of Directors:** Dr L. Namoloh (Chairperson), Adv. E.I Nekwaya (Director), Mr. S Nikodemus (Director)  
Ms. L. Kazetjikuria (Director), Mr. R.N Mbala (Director)  
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2.2 The lease shall commence on the **1<sup>ST</sup> MAY 2023** for a period of **TWENTY FOUR (24) MONTHS**, subject however to the further terms and conditions as set out in this Agreement and **expires on the 30<sup>TH</sup> APRIL 2025**.

### 3. OPTION OF RENEWAL

3.1 Subject to the provisions of clause 3.3 hereunder, the LESSEE shall at the expiration of the initial lease period of TWENTY FOUR (24) months, have the option to renew this lease upon the same terms and subject to the conditions set out below.

3.2 The option of renewal shall be exercised by the LESSEE giving written notice not later than 1 (one) month prior to the date on which the LEASE period expires and shall lapse if not so exercised.

3.3 All the terms of the lease shall continue to apply during the period.

### 4. DURATION OF LEASE

4.1 THIS LEASE shall come into operation on **01<sup>ST</sup> MAY 2023**, which date for the purpose of THIS LEASE shall be regarded as the commencement date, and shall subsist for a period of TWENTY FOUR (24) MONTHS, being terminable on a month's notice in writing from either party to the other.

### 5. RENT

5.1 The total rent for the vacant premises shall be **N\$ 15 180.00** per month (exl. VAT).

5.2 Property rentals shall be payable in advance, by the 7th of the month to which the rental relates.

#### 5.3 **Property leasing (new applicants):**

5.3.1 No rental account should be opened without an approved lease application, signed lease offer and signed lease agreement.

5.3.2 All credit checks and approvals applicable to normal customers shall apply to tenants

5.3.3 All tenants shall be required to provide security deposits equivalent to at least one month's rental unless a larger portion is deemed appropriate.

5.3.4 Property rentals shall be payable in advance, by the 7th of the each month.

5.3.5 Lessees shall be obliged to sign-up for debit orders forms provided by the lessor simultaneously on signing of the lease agreement to enforce the timely settlement of monthly rentals.

#### 5.4 **Extended payment terms:**

5.4.1 Interest at the rate/annum equal to the ruling Prime rate + 2% shall be charged on all outstanding rentals on Properties (leasing) accounts after the 15th calendar day of the month to which the outstanding rental relates, should a payment not be received. The interest will be calculated daily up to and including the day of eventual receipt (by RCC) of the rental.

### 6. PURPOSE

6.1 Unless otherwise approved in writing by the LESSOR, the PARTIAL WORKSHOP, and PORTION OF UNIMPROVED LAND AT THE ENTRANCE OF THE PREMISES (3000 sq.) shall only be used by the LESSEE for the purposes of using it as a workshop and truck port for refueling the trucks of WT FUEL CENTRE & TOPENERGY and for no other purpose whatsoever.

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**7. SUBLEASE**

7.1 The LESSEE shall *not* be entitled to sublease part or the whole of the premises to third parties without the LESSOR's prior written permission.

**8. INDEMNITY**

8.1 The LESSEE hereby indemnifies the LESSOR against any loss or damage from whatsoever cause arising that any third party may suffer on the premises.

**9. COSTS**

- 9.1 All costs in relation to the LESSEE's consumption of water and electricity of the premises shall be paid for by the LESSEE.
- 9.2 In addition, the LESSEE will be responsible to pay for municipal rates and taxes for the duration of the Contract.
- 9.3 The LESSEE shall be entitled to install water and electricity meters at its own cost and to upgrade the electricity supplied to the premises to the extent acceptable to the LESSEE, but only with the LESSOR's prior written consent.
- 9.4 Provided that in the event of such upgrade not being in line with the future use of the premises after termination of this Lease agreement for whatever reason, the LESSEE shall ensure that the electricity supply is restored to the same level as it was at the Commencement Date.

**10. RENTAL AND INCREASE**

10.1 Subject to the provisions of clause 5.2 above, the LESSEE shall pay to the LESSOR the rental in advance, free of bank exchange and without deduction, at the LESSOR's *domicilium* address in terms of this Agreement, as follows:

<i>Period</i>	<i>Monthly Rental Charge</i>	<i>VAT Tariff</i>	<i>Total Rental (per month)</i>
<b>01 May 2023 – 30 APRIL 2024</b>	<b>N\$ 15 180.00</b>	<b>N\$ 2 277.00</b>	<b>N\$ 17 457.00</b>
<b>01<sup>st</sup> MAY 2024 – 30 APRIL 2025 Beyond (subject to annual 10% escalation on extension)</b>	<b>N\$ 16,698.00</b>	<b>N\$ 2,504.70</b>	<b>N\$ 19,202.70</b>
<b>01<sup>st</sup> MAY 2025 – 30 APRIL 2026 Beyond (subject to annual 10% escalation on extension)</b>	<b>N\$ 18,367.8</b>	<b>N\$ 2,755.17</b>	<b>N\$ 21,122.97</b>

10.2 The LESSEE may not, under any circumstances, withhold payment of the monthly rental or any other amount due in terms of this Lease because it has been inconvenienced, or because its use of the Premises has been impaired or restricted by repairs, renovations, interruptions in the supply of services, or for any other reason whatsoever, *unless such inconvenience impaired use of the Premises and/or interruption of supply of services is caused by the willful conduct or gross negligence of the Lessor or any of its employees or agents.*

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- 10.3 Notwithstanding anything else to the contrary contained in this Agreement, whenever the rates of the premises are increased by the relevant local Authority, then and in such an event the LESSOR may by 1 (one) month's written notice to the LESSEE, increase the monthly rental by an amount concomitant to such increase.
- 10.4 Increase of 10% escalation on each anniversary of contract will be added yearly.

## 11. CONSENTS

- 11.1 The LESSEE shall, if it has done so already and if it is required by law, and within 3 (three) days from Signature Date at its own cost apply for and obtain the relevant municipal and other relevant consents necessary for the conducting of its business on the Premises.

## 12. ALTERATIONS, ADDITIONS, IMPROVEMENTS AND MAINTENANCE

- 12.1 The LESSEE shall not make any alterations or additions on the premises, or any part thereof, or any item of the LESSOR's Equipment without the LESSOR's prior written consent, but the LESSOR shall not withhold its consent unreasonably to any such alteration or addition which is of a minor nature and not structural.
- 12.2 If the LESSEE does alter, add to, or improve the Premises in any way, whether in breach of clause 12.1 or not, the LESSEE shall, if so required in writing by the LESSOR, restore the Premises on the termination of this Lease to its condition as it was prior to such alteration, addition or improvement having been made. The LESSOR's requirement in this regard may be communicated to the LESSEE at any time, but not later than the **14 (fourteen) days** after the LESSEE has delivered up the Premises pursuant to the termination of this Lease; and this clause 12.2 shall not be construed as excluding any other or further remedy which the LESSOR may have in consequence of a breach by the LESSEE of clause 10.1.
- 12.3 Save for any improvement which is removed from the Premises as required by the LESSOR in terms of clause 12.1, all improvements made on or to the Premises which become permanent fixtures and fittings shall belong to the LESSOR and may not be removed from the Premises at any time. The LESSEE shall not, whatever the circumstances, have any claim against the LESSOR for compensation for any improvement or repair to the Premises or the LESSOR's Equipment, nor shall the LESSEE have a right of retention in respect of any improvements.
- 12.4 The lessee shall at own cost/expense through the lease period maintain in good order and condition the interior of the building and all parts thereof including but not limited to, all windows, doors, fixtures, light switches and bulbs used in the premises, fair wear and tear excepted.
- 12.5 The lessor shall be responsible for the maintenance and repairs in or to the building other than those which are the responsibilities of the lessee and the lessor's obligation in this respect shall include maintenance and repair of the structure of the premises, all systems, works and installations contained therein

## 13. LESSOR'S RIGHTS OF ENTRY AND CARRYING OUT OF WORKS

- 13.1 The LESSOR's representatives, agents, servants and contractors may upon reasonable notice, without thereby giving rise to any claim or right of action on the part of the LESSEE or any other occupier of the Premises or any part thereof, enter the Premises in order to inspect them, to carry out any necessary works, or to perform any other lawful function in the *bona fide* interests of the LESSOR or the LESSEE.

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13.2 The LESSOR shall ensure that this right is exercised with due regard for and a minimum of interference with the beneficial enjoyment of the Premises by those in occupation thereof.

13.3 The LESSOR shall not, however, cause or allow any major building works to be carried out upon the Premises.

**14. COMPLIANCE WITH LAWS**

14.1 The LESSEE shall at all relevant times during the lease period comply with all laws, by-laws, Ordinances, Proclamations and Regulations relating to the tenancy of the premises and to fire appliances on the premises.

**15. SECURITY**

15.1 The LESSEE shall at all material times comply with such reasonable requests as are from time to time made in writing by or on behalf of the LESSOR for observance by the LESSEE and other occupiers of the Premises and their invitees, including (without generality being limited) rules and regulations in connection with the security of the Premises and the protection of persons and premises thereon, including in particular (again without generality being restricted).

15.2 This clause 15 shall not be construed as implying that the LESSOR assumes any liability which it would not otherwise have had in connection with the subject matter of any rule or regulation referred to therein.

**16. DAMAGE TO THE PREMISES**

16.1 Any damage caused to the premises as a result of any dismantling or removal of equipment or as a result of the LESSEE's failure to maintain the premises in such good order and condition, shall be made good by the LESSEE at the LESSEE's own cost and expense within 3 (three) days after written notice received from the LESSOR.

16.2 Notwithstanding the provisions of clause 16.1 above, the LESSEE shall at the termination date ensure that the premises are cleaned to the satisfaction of the LESSOR and shall return the premises to the LESSOR in the same order it was at the commencement of the lease.

**17. NO CESSION**

17.1 The LESSEE shall not for whatever reason during the currency of this Agreement cede, assign, transfer, or make-over any of the LESSEE's rights in terms of this lease, nor sub-let the premises or any part thereof, nor give up occupation or possession of the premises or any portion thereof, without the LESSOR's prior written consent, which consent shall not be unreasonably withheld.

**18. DESTRUCTION OF PREMISES**

18.1 If the Premises are destroyed or so damaged by an act of God such as nature damages that they can no longer be beneficially occupied, whether in full or in part, this lease shall terminate when that happens unless the parties agree otherwise in writing.

18.2 If the Premises are significantly damaged, but can still be beneficially occupied, this lease shall remain in force and the LESSOR shall repair the damage without undue delay, but the rent shall be abated so as to compensate the LESSEE fairly for the effects of the damage and repair work on the enjoyment of the Premises.

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18.3 Failing agreement on such abatement or on the applicability of this clause to any particular circumstances, the matter shall be referred to an expert appointed by the parties jointly, or if they do not agree on such appointment, the matter shall be referred to an expert nominated by the President for the time being of The Institute of Estate Agents of Namibia, and the decision of such expert shall be final and binding.

## 19. BREACH

19.1 Should the LESSEE -

19.1.1 fail to pay rental or any other monies due by the LESSEE in terms of this lease on the due date and thereafter fail to make payment thereof within 30 (thirty) days after receipt of the LESSOR's demand to such effect;

19.1.2 Commit any breach of any material term of this lease and fail to remedy such breach within 30 (thirty) days after receipt of the LESSOR's notice to the LESSEE requiring such breach to be remedied; or then and in any or all such events the LESSOR shall be entitled, without prejudice to any other claim of any nature whatsoever which it may have against the LESSEE as a result of such breach, to cancel this lease forthwith and to evict the LESSEE from the premises and to claim compensation for any damages suffered by the LESSOR.

19.1.3 Should the LESSOR breach any material term of this Agreement and fail to remedy such breach within 30 (thirty) days or receipt of the LESSEE's written notice or the LESSOR be liquidated, or sequestered (whether finally or provisionally), the LESSEE shall be entitled in any such event and without prejudice to any other claim of any nature whatsoever which it may have against the LESSOR as a result of such breach, to cancel this lease forthwith and claim compensation for any damages suffered by the LESSEE.

## 20. PAYMENTS IN THE EVENT OF CANCELLATION

20.1 Should the LESSOR cancel this lease and the LESSEE dispute the LESSOR's right to do so and remain in occupation of the premises pending the determination of such a dispute, the LESSEE shall continue to pay all amounts due to the LESSOR in terms of this lease on the due dates thereof, and the LESSOR shall be entitled to accept and recover such payments, without prejudice to the LESSOR's claim for cancellation then in dispute.

20.2 Should such a dispute between the LESSOR and the LESSEE be determined in favour of the LESSOR, such payments shall be deemed to be amounts paid by the LESSEE on account for damages suffered by the LESSOR of the unlawful holding over of the premises by the LESSEE.

## 21. DOMICILIUM

21.1 The parties choose as their *domicilium citandi et executandi* their respective addresses set out or referred to in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validity be served upon or delivered to the parties.

21.2 For purposes of this Agreement the parties' respective addresses shall be –

21.2.1 as regards the LESSOR at:

**Roads Contractor Company Ltd**  
**Private Bag 13373**  
**WINDHOEK**  
**TEL: 061 – 297 9000/9220**

21.2.2 as regards the LESSEE at:

**Austin Elao Elindi**  
**ERF 160**  
**Omakulukuma**  
**Ondangwa**  
**Mobile: +264 815806343**  
**Mobile: +264 81 582 0588**  
  
**Email: Topenergy@gmail.com**

at such other address, not being a post office box or *poste restante*, of which the party concerned may notify the other in writing.

21.3 Any notice given in terms of this Agreement shall be in writing and shall -

21.3.1 if delivered by hand deemed to have been duly received by the addressee on the date of delivery;

21.3.2 if posted by prepaid registered post deemed to have been received by the addressee on the 21<sup>st</sup> (twenty first) day following the date of such posting;

21.3.3 if transmitted by facsimile deemed to have been received by the addressee 1 (one) day after dispatch.

21.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the parties from another, including by way of facsimile transmission or e-mail, shall be adequate written notice or communication to such party.

## **22. NON-WAIVER**

22.1 No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties of their duly authorized representatives.

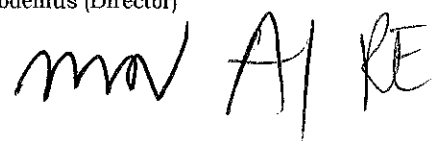
## **23. WHOLE AGREEMENT**

23.1 This Agreement constitutes the whole Agreement between the parties as to the subject matter and no agreements; representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

## **24. SEVERABILITY**

24.1 Where a term of this Agreement is found to be invalid, unlawful or unenforceable, such term is severable from the remaining terms, which will continue to be valid and enforceable. If any invalid term is capable of amendment to render it valid, the parties agree to consider the negotiation of an amendment to remove the invalidity, on the understanding however that there is no obligation to negotiate.

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**25. DISPUTE SETTLEMENT**

25.1 Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement, may be referred to an Adjudicator, appointed by the President of the Namibia Estate Agents Board (NEAB).

**26. MODIFICATION OR AMENDMENT**

26.1 Except by mutual agreement in writing between the parties, no change, modification or amendment shall be made to the present Contract.

**27. GOVERNING LAW**

27.1 This Contract shall be governed by, and construed in all respects in accordance with, the Laws of Namibia.

**28. COSTS FOR DRAFTING THE AGREEMENT**

28.1 Each party shall pay all its own costs incurred in the negotiating and drafting of this Agreement.

**29. SPECIAL CONDITIONS**

26.1 The parties agreed that the lessee undertakes to honor the following conditions before commencement of any activities at the premises, but within six (6) months after signing of this contract. Payment of the rental fee remains payable from the date stipulated under paragraph 4 of this contract.

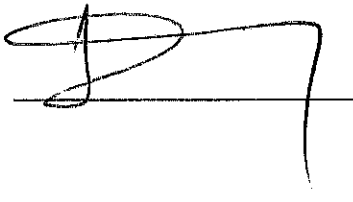
26.2 Erection of a boundary fence between the leased area and RCC to prevent unauthorized access by staff and visitors to Topenergy, and a new entrance gate for RCC staff, vehicles and visitors.

26.3 Monthly rent to be paid in the account of the Katima Mulilo Town Council to service the outstanding utility bill (debt) of RCC and to provide proof of such payment every month end.

26.4 Failure to adhere to the special conditions will void the lease agreement with immediate effect and without any prior notice given.

DATED and SIGNED at WINDHOEK on this 18 day of April 2023 in the presence of the undersigned witnesses:

**AS WITNESSES:**

1. 

2. \_\_\_\_\_

  
LESSOR  
ROADS CONTRACTOR COMPANY LTD




**Board of Directors:** Dr L. Namoloh (Chairperson), Adv. E.I Nekwaya (Director), Mr. S Nikodemus (Director)  
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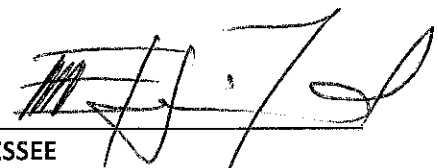
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DATED and SIGNED at WINDHOEK on this the 21 day of April 2023 in the presence of the undersigned witnesses:

**AS WITNESSES:**

1. 

2. \_\_\_\_\_

  
**LESSEE**  
**Austin Helao Elindi**  
**IDENTITY NUMBER: 94051000141**

**Board of Directors:** Dr L. Namoloh (Chairperson), Adv. E.I Nekwaya (Director), Mr. S Nikodemus (Director)  
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