

MEMORANDUM OF LEASE AGREEMENT ROOFTOP AND BASEMENT ~~PALNT~~ ^{Plant}

Made and entered into and between:

STADTMITTE PROPERTY (PTY) LTD

Herein represented by its duly authorized representative,

MR. FRANCOIS N.J. LOOTS

In his capacity as MANAGING AGENT

having its principal place of business at:

STADTMITTE BUILDING, SAM NUJOMA AVENUE, SWAKOPMUND

(hereinafter referred to as "the Lessor")

AND

PowerCom (Pty) Ltd

A Company incorporated under the laws of the Republic of Namibia, herein represented

By its duly authorized representative Alisa Amupolo in

her capacity as CEO of PowerCom (Pty) Ltd

Having its principal place of business at:

Unit 2, Maerua Heights, Burg Street

Windhoek

P O Box: 40799

Windhoek

Telephone Number: 061-2012090

Facsimile Number: +264 88 655 9891

(hereinafter referred to as "the Lessee")

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WHEREAS THE LESSEE IS CURRENTLY RENTING THE HEREINAFTER MENTIONED PREMISES FROM THE LESSOR FOR PURPOSES OF HOSTING A TELECOMMUNICATIONS BASE STATION;

AND WHEREAS THE LEASE AGREEMENT WHICH WAS SIGNED IN FEBRUARY 2007 IN RESPECT OF THE ABOVE LEASE HAS EXPIRED;

AND WHEREAS THE PARTIES ARE DESIROUS TO RENEW THE LEASE AGREEMENT ON THE FOLLOWING TERMS AND CONDITIONS:

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 "the 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;

1.1.2 "the property" means the Lessor's property upon which the premises are situated as described in the Schedule;

1.1.3 "the premises" means the portion of the property selected by the Lessee for purposes of this Agreement and to be occupied in accordance therewith;

1.1.4 "the equipment and/or Structures" shall include, but is not limited to: radio antennas; the hut and/or container; masts and towers; microwave dishes; fences and/or other structures, including security and/or safety equipment; foundation flooring, lightning protection- and earthing systems; micro-cells; paving and other related and accessory structures;

1.1.5 "fixed rate" shall mean fixed amount with no fluctuation and/or escalation of rental price for the lease period;

1.1.6 "the expiry date" means the date set out as such in the Schedule, or such other date as may be agreed in accordance with clause 3.

1.1.7 "Base Transceiver Station" means a tower structure with all its ancillary and supporting equipment, building and civil works and peripheral equipment, hereinafter referred to as BTS.

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2. LEASE

- 2.1 The Lessor lets the premises to the Lessee, subject to the provisions of this Agreement. From the date of signing this Agreement by both parties, the Lessee will have six (6) months in which to decide whether or not to use the site.
- 2.2 Subject to the provisions of clause 11, the lease shall commence on 1 September 2018 for a period of 5 years.
- 2.3 Any party to this lease agreement may terminate the agreement on three (3) months written notice to the other party.

3. OPTION TO RENEW

The parties to this agreement hereby agree that either of them may request the other party to enter into bona fide negotiations during a 30-day period prior to the expiration of this lease agreement, in order to renew this lease agreement on the same terms and conditions for a further period or negotiate a new lease agreement. Additionally, either party to this agreement may engage each other within a reasonable period and on good cause to re-negotiate further terms of the agreement.

4. PURPOSE

- 4.1 Unless otherwise approved in writing by the Lessor, the premises shall only be used for the purposes of a BTS and related purposes, as the Lessee may deem expedient.
- 4.2 Without limiting the generality of 4.1, the Lessee shall be entitled, at its own expense, to -
- 4.2.1 install all or any equipment and/or erect structures on the premises for the purpose set out in clause 4.1, including on the roof top;
- 4.2.2 erect, maintain, renew and replace any equipment as described in clause 1.1.4 as well as all required support structures upon the premises, and to remove the same at any time;
- 4.2.3 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 the same at any time;
- 4.2.4 modify structural elements of the premises after approved by the lessor, introduce innovations, improvements, additions, substitution of any property equipment and modifications to roof loads (according to generally accepted technical specifications) and whatever is necessary to the declared use of the premises;
- 4.2.5 connect and ensure the supply thereto of electric current. 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;

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- 4.2.6 build a BTS including necessary foundations and underground works by notice and upon first request on his premises until the permanent site is operational;
- 4.2.7 provide power for the BTS to the Lessee, provided there is a power connection point available at the Lessor's premises; and provided the available power meets the technical standards of the Lessee and approval of utility power provider.
- 4.3 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.
- 4.4 All the foregoing installations, and any decommissioning and removal thereof, shall be undertaken at the sole discretion of the Lessee, and without having to give notice to the Lessor or obtaining the Lessor's permission

5. SUBLEASE/SITE SHARING





- 5.1 The Lessee shall be entitled, subject to clause 5.2, to sublease part or the whole of the leased premises to other entities or suppliers of telecommunication services to use the premises or equipment thereon on terms not in conflict with this Agreement.
- 5.2 The Lessee shall be entitled, to share or allow the occupation of the premises as well as facilities thereon by a company or entity associated with the Lessee.
- 5.3 The Lessor has the right to apply for and join the tower built by the Lessee provided that:
 - 5.3.1 the Lessor applies for co-location through the regular PowerCom site sharing procedures
 - 5.3.2 the Lessor submits a proper structural analysis produced by a registered structural engineer on the additional load of the added equipment and antenna's to the Lessee
 - 5.3.3 the Lessee approves the structural analysis
 - 5.3.4 the principle "First come, first served" applies to this agreement
 - 5.3.5 the requested height or space is not occupied or reserved by another co-locator.

6. EXCLUSIVE RIGHTS

- 6.1 The Lessee and its employees, clients, agents or contractors shall be entitled to access the site any time.

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 5 shall cause to the Lessee's equipment and installations on the property in the exercise of its rights conferred by the Lessee.

   
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7.2 The parties agree that the Lessee, for purposes of using any structure and/or equipment constructed and/or erected, shall require the supply thereto of electric current. The Lessee shall pay for any costs in relation 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 the equipment and/or structure constructed, to the proposed works.

7. CONTRACTING WITH COMPETITORS

The Lessor may contract with any other supplier or telecommunication service provider in respect of its property without the Lessee's prior written consent, save as may be required by law. 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 Lessee's equipment or the access to and exit from the premises and the Lessee's site and installations thereon.

8. COSTS OF SERVICES AND INSTALLATIONS

8.1 All costs in relation to the consumption of electricity on the premises, as well as all expenses relating to the metering of such consumption, shall be paid by the Lessee.

8.2 The Lessee shall be entitled at its own cost to upgrade the electricity supplied to the premises with the prior consent of the Lessor, which consent shall not be unreasonably withheld, or delayed.

8.3 All costs of other services supplied to the premises shall be for the account of the Lessor.

9. RENTAL

The Lessee shall pay to the Lessor the rental set out in the Schedule. All rental and other amounts payable by the Lessee to the Lessor in terms of this Agreement shall be paid in accordance with the provisions set out in the Schedule, in advance on or before the first day of each period as agreed (that is, either monthly or annually), free of bank exchange and without deduction, at the Lessor's *domicilium* address in terms of this Agreement or as otherwise directed by the Lessor. No rental payment is due to Lessor before municipal and/or other relevant consents are duly obtained as provided by clause 11.1 here below or before construction works are started by the Lessee, if any. Any rental will be proportionally paid from the date of the Lessee's receipt of the last consent, permit, authorization or permission to be obtained and/or upon the start date of construction works on the Lessor's property, whichever date comes first.

10. VAT

The Lessee shall be liable for the payment of Value Added Tax, if chargeable, on the rent amount payable in terms of this lease agreement.

11. CONSENTS, PERMITS, ETC.

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11.1 The Lessee shall at its own cost ensure that

any relevant consents necessary for the construction, erection and/or fixture of the equipment referred to above are in place. The Lessor undertakes, in case of need and if so requested by the Lessee, to apply for any further consents, permits, authorizations and permissions to be received from any Authority whatsoever on behalf of the Lessee, and any costs theretofore will be paid by the Lessee.

11.2 Should any relevant consent, permit, authorization or permission referred to in clause 11.1.

a) not be obtained within a reasonable time after the Lessee and/or the Lessor has applied therefore, or

b) be refused or

c) having been granted, be suspended or revoked by the relevant authority;

the Lessee shall, notwithstanding the provisions of clause 2.2., be entitled to cancel this Agreement forthwith on seven (7) calendar days' notice. Until the cancellation date the Lessee remains liable to pay any costs, including rental, only in case c) above and liable to pay any costs, excluding rental, in cases a) and b) above.

11.3 Notwithstanding the provisions of clause 2.2, should the Lessee's license to operate a Class Network Facilities Telecommunications Service be suspended or revoked for whatever reason, or should any occurrence, including but not limited to buildings being erected adjacent to the premises, have measurable interference with the Lessee's class network facilities telecommunications service network, then the Lessee shall be entitled to cancel this Agreement on 30 (thirty) days' notice, the Lessor agreeing that the aforesaid events shall constitute valid grounds for early termination. The Lessor shall not be entitled to any further rental, or damages, where the lease is terminated in accordance with the provisions of this clause.

11.4 If it should appear during the use of the installation that it becomes less performing or impossible to use for technical, regulatory or practical reasons, the Lessee is entitled to cancel this lease agreement before its expiration by giving three (3) months' notice without any further compensation.

11.5 The Lessee may cancel the Agreement before the expiration of the term by giving three (3) month notice and an agreed fixed indemnification of three (3) month rent.

12. 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 reason, to remove such equipment within a period of 90 (ninety) days after termination of the contract at its own cost.

13. WARRANTIES

13.1. The Lessor warrants that he is the registered owner of the property and has exclusive title and rights thereto and that there are no third party rights, real or personal, liens, limitations or constraints of any nature whatsoever, which might exclude or limit any Lessee's rights under this Agreement.

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13.2. The Lessor will avoid any act or use of the premises by third parties that may in any 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.

14. ALTERATIONS

Upon termination of the Agreement, as proprietor of the equipment and/or structures, the Lessee will retain title to the equipment and/or structures (all the elements and components of the Base Station) and shall, within a reasonable period and at 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 condition, normal wear and tear excepted. The Lessor shall take any necessary action in order that the equipment and/or structures may be removed by the Lessee or by any persons so designated by the Lessee.

15. DAMAGE TO THE LEASED PREMISES

Any direct damage caused to the premises as a result of any installation or removal of equipment or as a result of the Lessee's failure to maintain the premises in good order and condition, shall be made good by the Lessee at the Lessee's own cost and expense within a reasonable period of time after written notice received from the Lessor.

16. NO ALTERATIONS TO PREMISES BY LESSOR

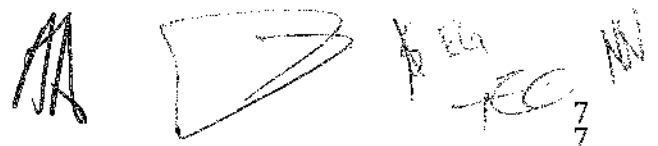
The Lessor shall not change, move, alter or interfere with any installation, construction, erection, structure or equipment in or upon the premises constructed and/or erected by the Lessee, nor shall the Lessor attach any electrical appliances to the electric system of the premises supplied for the purposes of any such installation, construction, erection, structure or equipment, or 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.

17. COMPLIANCE WITH LAWS

The Lessee shall at all times comply with all laws, by-laws, Ordinances, Proclamations and Regulations relating to the tenancy of the premises including fire extinguishing appliances to be kept and maintained on the premises.

18. 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 written 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

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delegated to the transferee's party and shall be jointly responsible for the aforesaid obligations together with the Transferee party.

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 2 (two) months after receipt of the Lessor's written demand to such effect;
- 19.1.2 Fail to comply with the Lessor's written notice to the Lessee requiring a breach to be remedied; or
- 19.1.3 be liquidated or sequestered or be placed under judicial management (whether provisionally or finally), then and in such event 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 terminate this lease forthwith and to evict the Lessee from the premises and to claim compensation for any damages suffered by the Lessor.

19.2 Should the Lessor -

- 19.2.1 breach any material term of this Agreement and fail to remedy such breach within 30 (thirty) days of 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. TERMINATION

- 20.1 Either party may terminate the agreement by giving three (3) months written notice of such termination to the other party.
- 20.2 Should the Lessor terminate 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 termination then in dispute.
- 20.3 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 the address set out in the Schedule hereto:

Stadtmitte Building
Sam Nujoma Avenue
Swakopmund

P O Box: 8786
Swakopmund

Contact Number: 064 407000
Email: flettrust@gmail.com

21.2.2 as regards the Lessee at:

PowerCom Head Quarters
Unit 2, Maerua Heights, Burg Street
Windhoek

P O Box: 40799
Windhoek

Telephone Number: 061-2012090
Facsimile Number: 088 655 9891
Email: info@powercom.na

or 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 21st (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) business 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 the other, including by way of facsimile transmission, shall be adequate written notice or communication to such party.

22. NON-WAIVER

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 or their duly authorized representatives.

23. WHOLE AGREEMENT

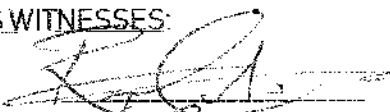
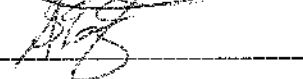
This Agreement constitutes the whole Agreement between the parties as to the subject matter and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

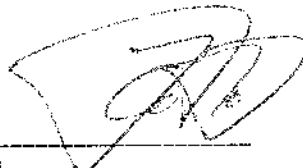
24. ADMINISTRATIVE COSTS

The Lessee shall pay all its own costs incurred in the negotiating and drafting of this Agreement, as well as all stamp duty payable in respect hereof. The Lessor shall pay all its own costs incurred in the negotiating and drafting of this Agreement.

DATED and SIGNED at Swindon on this 6th day of August 2018 in the presence of the undersigned witnesses:

AS WITNESSES:

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2. 


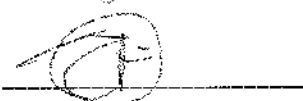


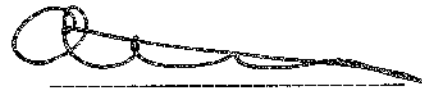
LESSOR

(the signatory hereby warranting to be duly authorised and empowered to sign this agreement on behalf of the Lessor and to bind the Lessor to this agreement)

DATED and SIGNED at Windhoek on this 20 day of August 2018 in the presence of the undersigned witnesses:

AS WITNESSES:

1. 
2. 



LESSEE

(the signatory hereby warranting to be duly authorized and empowered to sign this agreement on behalf of the Lessee and to bind the Lessee to this agreement)

SCHEDULE

Site ID: ENG0014

Site Name: STADTMITTE

Owner: STADTMITTE (PTY) LTD

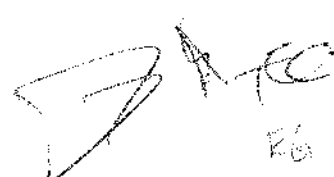
1. DESCRIPTION OF THE PREMISES: ROOFTOP
2. COMMENCEMENT DATE: 1 September 2018
3. CONTRACT PERIOD: 5 years
4. RENTAL: N\$ 14. 500.00 (VAT EXCLUSIVE)
5. ESCALATION: FIXED
6. METHOD OF PAYMENT:
(monthly in advance into Lessor's bank account)

7. LESSOR'S DOMICILIUM
(PHYSICAL ADDRESS):

Stadtmitte Building
Sam Nujoma Avenue
Swakopmund

8. BANKING DETAILS:

Account Holder: Stadtmitte Property Development
Bank: Bank Windhoek
Account Number: 8000550938
Branch: Swakopmund
Branch code: 481772



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