ONGWEDIVA
FREEDOM & HARD WORK

ONGWEDIVA
TOWN COUNCIL
Private Bag 5549, Ongwediva
Tel: 00264 65 233700
Fax: 00264 65 230521
Website:
www.ongwediva.com.na

LAND LEASE AGREEMENT

Entered into between

ONGWEDIVA TOWN COUNCIL

(Herein represented by Damian Eugen Egumbo and Fabiam George in their respective capacities as **CHIEF EXECUTIVE OFFICER** and **CHAIRPERSON OF THE MANAGEMENT COMMITTEE** of the Council acting by virtue of the authority granted in terms of Section 31A(a) of the Local Authorities Act, 1992 (Act 23 of 1992) as amended.)

and

POWERCOM (PTY) LTD

Reg. No 2000/535

in respect of

CERTAIN ERF/PORTION: ERF 1584, EFIDI EXTENSION 5
17°48'50" S: 15°47'30" E;

AND A PORTION OF ONGWEDIVA
TOWN AND TOWNLANDS NO. 881, EAST OF
OIDIVA PROPER
17°46'25" S: 15°46'28.23" E

SITUATED IN THE TOWN COUNCIL OF ONGWEDIVA

REGISTRATION DIVISION "A"

MEASURING: 150m² each

WHEREBY IT HAS BEEN AGREED AND RECORDED AS FOLLOWS:

1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in the Lease Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Lease Agreement nor any clause hereof. Unless a contrary intention clearly appears –

1.1. words importing:

1.1.1. any one gender includes the other two genders;

1.1.2. the singular includes the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*.

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have the corresponding meanings, namely –

1.2.1. **"Applicable Law"** means any law (including common or customary law) or statutory, constitutional, decree, judgment, treaty, regulation, directive, by-law, order or any other legislature proclaimed by any government, local government, statutory or regulatory body or court;

1.2.2. **"Business Day"** means any day other than a Saturday, Sunday or an officially recognized public holiday in Namibia in terms of the Public Holidays Act 26 of 1990;

1.2.3. **"Development Agreement"** means any written agreement to be entered into between the Parties contemporaneously with this Lease Agreement, for the construction of any permanent structures and/or improvements on the PROPERTY;

1.2.4. **"Development Costs"** means the final Development Costs (with the term "Development Costs") having the meaning ascribed thereto in the Development Agreement;

1.2.5. **"Extension Periods"** means the periods for which the Lease may be extended in terms of clause 12;

1.2.6. **"Improvement"** means permanent structure, the nature of which, if removed, will cause damage to the PROPERTY;

1.2.7. **"Lessor"** means the ONGWEDIVA TOWN COUNCIL;

1.2.8. **"Lessee"** means (Lessee Details);

1.2.9. **"Lease Agreement"** means this agreement between the Parties in relation to the PROPERTY;

1.2.10. **"Lease Commencement Date** "means the first day of the calendar month immediately following the signature date unless otherwise agreed upon between the Parties;

1.2.11. **"Lease Period"** means collectively the Initial Period and any Extension Period;

1.2.12. **"Parties"** means the Parties to this agreement and "Party" shall mean any one of them;

1.2.13. **"PROPERTY"** means the designated vacant land that is the subject of the Lease Agreement,

1.2.14. **"Purpose"** means approved land use;

1.2.15. **"Signature Date"** means the date upon which this Lease Agreement is signed by the Party signing last in time provided that all Parties have then signed this agreement.

1.3. any reference to an enactment is reference to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Lease Agreement are changed, the relevant provision of this Lease Agreement shall be read also as if it had

been amended as necessary, without necessity for an actual amendment.

1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Lease Agreement;

1.5. when any number of days prescribed in this Lease Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless last day shall fall on a Saturday, Sunday or a Public Holiday, in which case the last day shall be the next succeeding Business Day;

1.6. if figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.7. expressions defined in this Lease Agreement shall bear the same meanings in schedules or annexures thereto which do not themselves contain their own conflicting definitions;

1.8. reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.

2. **INTRODUCTION**

It is recorded that:

2.1. the LESSOR is the owner of the PROPERTY at the Lease Commencement Date; and

2.2. it is intended that the LESSOR will lease to the LESSEE the PROPERTY pursuant to this Lease Agreement.

2.3. Whereas the LESSEE acknowledges and warrants that it enters into this lease on the condition that the PROPERTY herein leased

is vacant land and at all material times to the period of this Lease, remains the property of the LESSOR.

2.4. Whereas the LESSEE further acknowledges and warrants that only structures of a temporary nature may be erected on the PROPERTY in terms of this Agreement, which structures shall not constitute Improvements, as defined herein, subject to the provisions of clause 14 below.

2.5. **the LESSEE has undertaken to develop and construct the PROPERTY pursuant to the Development Agreement to be entered into between the parties.**

2.6. It is intended that the LESSOR will lease to the LESSEE the PROPERTY pursuant to this Lease Agreement for the purpose of Telecommunication services.

3. **PARTIES**

The Parties to this Agreement are:

3.1. **THE TOWN COUNCIL OF ONGWEDIVA**
C/O MANDUME NDEMUFAYO & DR
LIBERTINE AMADHILA STREET
ONGWEDIVA

And

3.2. **POWERCOM (PTY) LTD**
REGISTRATION NUMBER: 2000/535
140 NPTH BUILDING NO. 4 JULIUS NYERERE STREET, SOUTHERN INDUSTRIAL AREA
P.O Box 40799, WINDHOEK
info@powercom.na
061 2012090

4. **LETTING AND HIRING**

4.1. The LESSOR hereby lets to the LESSEE who hereby hires the LAND for the Purpose subject to the applicable terms and conditions set out in this Agreement.

4.2. The LESSEE shall use the LAND only for the Purpose as defined under (2.6) and shall not use the LAND for any other purpose or activity without written consent of the LESSOR being first had and obtained.

5. **VOETSTOOTS**

The LAND is leased "voetstoots" and the LESSOR is not liable on remeasurement of the LAND for any shortfall, nor does it wish to benefit from any excess. The LESSOR does not warrant that the LAND is suitable for the purpose for which it is leased or that the extent of the LAND stipulated in the documents, diagrams, notices or this Agreement is in fact the extent of the LAND and the LESSEE herewith expressly acknowledges that no guarantee, representations or undertakings were given or made to it, in respect of any attributes of the LAND, or otherwise. The LESSOR herewith explicitly states that no compensation will be payable for patent or latent defects and no reduction of the rent will be considered or effected to cover the same.

6. **DURATION**

This Lease shall come into operation on the **01st AUGUST 2024 TO 31ST JULY 2034** and unless terminated earlier in terms of this Agreement, shall subsist for an uninterrupted period of **TEN (10) YEARS** from that date.

7. **RENT**

7.1. The Rent payable by the LESSEE to the LESSOR shall be the amount of **ONE THOUSAND FIVE HUNDRED AND ZERO CENTS (N$1500)** Namibia Dollars for each portion of land, which brings the

total amount to **THREE THOUSAND AND ZERO CENTS (N$3000)** Namibia Dollars for the two portions of land.

7.2. The Rent shall be paid monthly in advance, on or before the 07th day of each and every Month of the Lease Period.

7.3. The Rent payable shall be subject to the annual tariff review.

8. RATES, TAXES AND UTILITY CHARGES

8.1. The Parties agree that-

8.1.1. in addition to the payment of the Rent, the LESSEE shall be responsible for the payment of the following Utility Charges:

8.1.1.1. municipal rates and taxes for the PROPERTY;

8.1.1.2. water and electricity consumption attributable to the LESSEE;

8.1.1.3. service charges for sewerage and refuse removal for the PROPERTY payable to the Ongwediva Town Council;

8.1.1.4. any other charges incurred by the LESSEE in respect of the PROPERTY; and

8.1.1.5. where applicable, the costs of providing the applicable insurance.

8.2. Payment of Utility Charges payable by the LESSEE shall be paid directly to the Town Council of Ongwediva with the exception of electricity related charges which amount shall be paid to the relevant utility service provider.

9. PAYMENTS AND DEPOSIT PAYABLE

9.1. All payments due by the LESSEE to the LESSOR under this Agreement shall be made to the LESSOR into the bank account, the details of which are provided in 9.2 below, or to such other person or place, if any, as the LESSOR has designated from time to time by written notice to the LESSEE.

9.2. The banking details are:

BANK:	NED BANK NAMIBIA
ACCOUNT NAME:	ONGWEDIVA TOWN COUNCIL
ACCOUNT NUMBER:	11000077374
ACCOUNT TYPE:	CHEQUE ACCOUNT
BRANCH CODE:	461-649
BRANCH NAME:	OSHAKATI

9.3 If no payment is received on or before the 07th, the LESSOR shall impose interest on the outstanding lease amount. The interest shall be as per gazetted tariff of Ongwediva Town Council.

9.4 If no payment is received by the 07th of the subsequent months, a formal notice may be issued to demand payment.

9.5 Should no payment be received following the steps envisaged in 9.4 above, steps provided under (18) hereunder shall be pursued.

10. ASSIGNMENT AND SUBLETTING

10.1. The LESSEE shall not be entitled, except with the prior written consent of the LESSOR, which consent the LESSOR shall provide at its sole and absolute discretion:

10.1.1. to cede all or any of the rights of the LESSEE under this Lease; or

10.1.2. to sublet or give up possession of the PROPERTY, in whole or part, to any third party.

11. **THE PARTIES' OBLIGATIONS**

Without derogating from the effectiveness of any obligations imposed on the Parties in terms of this Lease or by the Law, the Parties undertake, for the duration of the Lease to fulfil the following obligations:

11.1. **In respect of the LESSEE:**

11.1.1. at her own cost, care for and maintain the PROPERTY in a clean and sanitary condition; and

11.1.2. Pay the Rent and all Utility Charges due to the LESSOR every Month.

11.1.3. Refrain from erecting any structures of a permanent nature on the PROPERTY, as well as making any Improvements thereon, without following the procedures prescribed herein.

11.1.4. Utilize the PROPERTY for the purpose agreed upon in terms of this Agreement.

11.1.5. Refrain from occupying/utilizing more space than the area demarcated for this specific lease, thereby encroaching in neighboring land.

11.1.6. Abide by the Applicable Laws.

11.2. **In respect of the LESSOR:**

11.2.1. make available the PROPERTY to the LESSOR at the time agreed upon by the Parties; and

11.2.2. use its best endeavour to ensure that the LESSEE enjoys undisturbed and uninterrupted use and enjoyment of the PROPERTY.

11.2.3. Consider the application by the LESSEE for improvements, according to the procedures prescribed herein.

12. EXCLUSION OF THE LESSOR FROM CERTAIN LIABILITY AND INDEMNITY

12.1. The LESSOR shall not be liable for any damage suffered by the LESSEE or any third party as a result of:

12.1.1. damage or destruction of any PROPERTY within or on the PROPERTY;

12.1.2. subject to the condition or state of repair at any time of the PROPERTY or Building or any part thereof;

12.1.3. failure or suspension of municipal services to the PROPERTY; or

12.1.4. any interruption or interference with the enjoyment or beneficial occupation of the PROPERTY caused by any building operations or other works on or about the PROPERTY, Building or PROPERTY, whether carried out by the LESSOR or anybody else.

13. NUISANCE

13.1. The LESSEE shall occupy the PROPERTY and conduct its Purpose in a manner which ensures that such use and conduct do not interfere with, cause any disturbance or nuisance of whatsoever nature to, or affect the rights and privileges of the LESSOR, any other LESSOR of the PROPERTY or any member of the general public.

14. STRUCTURAL ALTERATIONS, ADDITIONS AND IMPROVEMENTS

14.1. The LESSEE shall not make any structural or functional alterations, additions or improvements **("Improvements")** in, or to the PROPERTY, without the LESSOR's prior consent, which consent shall be at the sole discretion of the LESSOR and regulated by a

development agreement ("**Development Agreement**") to be entered into subsequent to compliance with the provisions of 14.3 below.

14.2. The LESSEE, subject to the discretion of the LESSOR, may be entitled to apply for the erection of or make such Improvements as may be approved, in writing, by the LESSOR.

14.3. The Parties agree that the following shall be complied with by the LESSOR in order for the LESSEE to consider the aforesaid application:

14.3.1. the LESSEE shall bring an application to the LESSOR, through its Planning and Technical Services department, for the erection of Improvements on the PROPERTY, in the form of plans, which are to be in the standard and form that is in compliance with the Applicable Laws.

14.3.2. The Lessor shall consider the plans and make a finding on the approval or rejection thereof, in its own discretion and considering the following, amongst other requirements:

14.3.2.1. That the Improvements to be made on the PROPERTY will not cause any damage to the PROPERTY upon removal thereof and should that be the case, that the LESSEE accepts liability of the damage to the PROPERTY and agrees to compensate the LESSOR for any damages that may result.

14.4. All Improvements made to the PROPERTY in the manner prescribed above, shall belong to the LESSOR and may not be removed from the PROPERTY at any time. The LESSEE shall, under no circumstances whatsoever, claim reimbursement from the LESSOR for the cost of Improvements.

14.5. The LESSEE will not be entitled to and hereby waives any lien resulting from alterations effected for any reason whatsoever to the leased PROPERTY and indemnifies the LESSOR against liens and claims of any person in connection with such alterations, unless the LESSOR and the LESSEE agree in writing to the contrary.

14.6. The LESSOR shall be entitled to carry out structural alterations and building work (the **"Works"**) to the PROPERTY, provided however, that Works shall not be made to the PROPERTY without the consent of the LESSEE and without complying with the provisions of 14.3 above, which consent shall not be withheld unreasonably.

14.7. The LESSEE hereby agrees to remove, at its own cost, any Improvements on the land made in breach of the provisions of this clause 14 in its entirety, and to make good or reimburse the LESSOR for any damages on the PROPERTY that may result in the removal of such improvements.

14.8. For purposes of 14.6, the Parties agree that LESSOR's, agents, workmen and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the LESSEE, enter the PROPERTY in order to inspect it, to carry out any necessary repairs, replacements, or Works or to perform any other function in the *bona fide* interest of the LESSOR or the LESSEE, provided that the LESSOR shall ensure that this right is exercised with due regard for and with minimum interference of the beneficial enjoyment of the PROPERTY by those in occupation thereof.

15. DAMAGE TO OR DESTRUCTION OF THE PROPERTY

15.1. If the PROPERTY is destroyed or so damaged to the extent that the LESSEE can no longer occupy the PROPERTY for the Purpose, the Parties shall be entitled to:

15.1.1. terminate the Lease; or

15.1.2. Suspend the Lease until such time as the damage is made good and the PROPERTY can be occupied again for the Purpose, in which case the Lease Period shall automatically be extended for the period that the LESSEE was prevented from occupying and utilizing the PROPERTY due to the aforesaid damage or destruction.

15.2. Nothing contained in this 15 *(Damage To or Destruction of The PROPERTY or PROPERTY)* shall entitle the LESSEE to any claim or right of action against the LESSOR for the reason only that the situation contemplated in 15.1 (the "**Situation**") occurred, provided that if the Situation occurred as result of an act or omission for which either Party is responsible in terms of this Lease or in Law, the other Party shall not be excluded by any reason of any of the aforegoing provisions of this 15 (*Damage To or Destruction of The PROPERTY or PROPERTY*) from exercising or pursuing any alternative or additional right or action or remedy available to the latter Party in terms of this Agreement or in Law.

16. **RENEWAL**

16.1. Should the LESSEE be desirous of leasing the PROPERTY after the expiration of this Lease, Either party shall, within 90 calendar days before the expiration, give notice in writing to the LESSOR of her intention to renew the Lease; on which notice the LESSOR shall, within 30 (Thirty) calendar days of receipt thereof, inform the LESSEE whether or not it will still lease out the PROPERTY to the LESSEE after the expiration, and if so, on what terms and conditions.

16.2. Approval for renewal is subjected to terms and conditions of lease Council resolutions and other social economic factors.

16.3. Nothing contained in this 156 (*Renewal)* provides the LESSEE with any pre-emptive right to renewal of the Lease.

17. **PRE-EMTPTIVE RIGHT**

17.1. The parties expressly agree that the LESSEE shall not have a right of first refusal to the purchase of the PROPERTY, in the event that the LESSOR elects to sell the PROPERTY.

17.2. In the event of a sale of the PROPERTY, The LESSEE shall not claim any entitlement to a pre-emptive right on account of any Improvements made on the PROPERTY by him, and further that the right to dispose of the PROPERTY to a third party shall in no way be influenced nor affected by the Improvements made on the PROPERTY.

18. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS BY THE PARTIES**

18.1. Each of the LESSOR and LESSEE hereby unconditionally warrants and represents to the other of them that:

18.1.1. it has the legal capacity and the means to enter into and implement this Lease on the terms and conditions herein set out; and

18.1.2. the rights and obligations expressed to be assumed by each in this Agreement are legal, valid, binding and enforceable obligations.

19. **BREACH AND TERMINATION**

19.1. In the event of either Party committing a breach of any of the provisions of this Lease, and remaining in breach within 14 (Fourteen) calendar days of receiving notice from the other Party calling upon the defaulting Party to remedy the breach, the other Party may, without prejudice to any alternative or additional right of action or remedy available to it under the circumstances;

19.1.1. cancel the Lease with immediate effect;

19.1.2. claim damages;

19.1.3. claim specific performance of all the terms and conditions of this Agreement; or

19.1.4. exercise all or any rights which it might hold under the common Law of Namibia or otherwise.

19.2. Either Party may terminate this Agreement by giving 30 (Thirty) calendar days written notice of its intention to terminate.

20. SUCCESSORS IN TITLE

20.1. Subject to the conditions hereof, the parties hereto agree that this agreement will be binding on successors in title or assignees.

21. NON-WAIVER

21.1. Any indulgence granted to the LESSEE in not insisting on explicit performance of the LESSEE'S obligation in terms of this Agreement, or the acceptance of any payments after due date shall not be construed as a forfeiture of the LESSOR'S rights in terms of this Agreement, nor shall it be construed as novation of the Agreement or tacit amendment of any of the terms of this Agreement.

22. COMPLIANCE WITH TERMS OF ANY STATUTE, BY-LAWS OR REGULATIONS

22.1. Without in any way derogating from the obligations imposed upon the LESSEE in terms of this Agreement, the LESSEE shall, in addition, be obliged to conform to all Laws affecting the use of the PROPERTY, Building or PROPERTY.

22.2. The PROPERTY is let subject to the conditions appertaining thereto and all such conditions and limitations as the Government has or may impose by virtue of the provisions of the Townships and Division of Lands Ordinance, 1963 (Ordinance 11 of 1963) or by virtue of the provisions of the Townships Ordinance, 1928 (Ordinance 11 of 1928).

22.3. Without prejudice to the aforegoing this Lease shall further be subject to the conditions of the Zoning Scheme of Ongwediva promulgated in terms of the Town Planning Ordinance, 1954 (Ordinance 18 of 1954) and the PROPERTY may only be used in accordance with the said Scheme.

22.4. For the purpose hereof, the LESSEE acknowledges that it is aware of and understands the restrictions and conditions imposed in terms of the aforesaid Ordinances.

23. ***DOMICILIUM* AND NOTICES**

23.1. The Parties choose as their *domicilium citandi et executandi* (*"domicilium"*) for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement (collectively "Notice") the following:

23.1.1. **LESSOR:**

ONGWEDIVA TOWN COUNCIL
c/o MANDUME NDEMUFAYO & DR
LIBERTINE AMADHILA STREET
ONGWEDIVA
P/Bag 5549, Ongwediva, Namibia
Email: mnahambo@otc.com.na

23.1.2. **LESSEE:**

POWERCOM (PTY) LTD
REGISTRATION NUMBER: 2000/535
140 NPTH BUILDING NO. 4 JULIUS NYERERE STREET, SOUTHERN INDUSTRIAL AREA
P.O Box 40799, WINDHOEK
info@powercom.na
061 2012090

provided that a Party may from time to time change any address to any other physical address, postal address or e-mail address within Namibia by written notice to the other Party to that effect. Such change of address will be effective 7 (seven) calendar days after receipt of notice by the other Party of the change of *domicilium*.

24. GOVERNING LAW AND JURISDICTION

24.1. This Agreement will in all respects be governed by and construed under the Laws of Namibia.

24.2. Subject to the provisions of this Agreement, the Parties hereby consent and submit to the jurisdiction of the Magistrate's Court in any dispute arising from or in connection with this Agreement.

25. GENERAL

25.1. This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter hereof.

25.2. No Party shall be bound by any express or implied term, representation, warranty, undertaking or the like, not recorded in this Agreement.

25.3. No addition to, variation or consent to cancellation of this Agreement including this 25.2 and no extension of time, waiver or realisation or suspension of any provisions or terms of this Agreement including this 25.2 shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.

SIGNED at ONGWEDIVA on 16TH JULY 2024

On behalf of the **LESSOR**	Witnesses
Signature	Signature
Name of Signatory **DAMIAN EUGEN EGUMBO**	Name of Signatory Miriam Nakambo
Designation **CHIEF EXECUTIVE OFFICER**	
Signature	Signature
Name of Signatory **FABIAM GEORGE**	Name of Signatory Lila G. Shihwandy
Designation **CHAIRPERSON** **MANAGEMENT COMMITTEE**	O. T. C.

SIGNED at WHK on 05 - September - 2024

On behalf of the **LESSEE**	**Witnesses**
Signature	Signature
Name of Signatory	Name of Signatory Jannetha Ndeyapo Jason
Designation	
Signature	Signature
Name of Signatory	Name of Signatory BEATUS T. AMADHILA
Designation	

Ref : L-1 (PowerCom)
Enq. : Mrs. M. Nahambo
E-Mail : mnahambo@otc.com.na

PowerCom (Pty) Ltd
P.O Box 40799
Windhoek
info@powercom.na

ONGWEDIVA
TOWN COUNCIL
Private Bag 5549, Ongwediva
Tel: 00264 65 233700
Fax: 00264 65 230521
Website:
www.ongwediva.com.na

03 July 2024

Dear Mr. P. Britz

RE: REQUEST TO LEASE LAND EAST OF OIDIVA PROPER AND IN EFIDI EXTENSION 5 BY POWERCOM (PTY) LTD

I refer to the above subject matter.

Council on its monthly meeting held on 29th May 2024 at the Ongwediva Town Council through **RESOLUTION: CM 108.2/2024 (MCM 87.5/2024)** made the following decision;

COUNCIL RESOLVED;

- That the application by PowerCom (Pty) Ltd to lease portions of land with combined extents of 300m² east of Oidiva Proper and in Efidi Extension 5 be approved for a period of 10 years subject to the following conditions;
- That the base stations be developed on the portions of land with the coordinates; 17°46'25" S: 15°46'23" E and 17°48'50" S: 15°47'30" E respectively.
- That a total lease amount of N$ 3 000.00 be paid to Council on a monthly basis for the two sites.
- That a lease agreement be entered between Ongwediva Town Council and PowerCom (Pty) Ltd.

I trust that the above shall suffice.

Yours Sincerely

Mr. Damian Egumbo
CHIEF EXECUTIVE OFFICER
ONGWEDIVA TOWN COUNCIL

OFFICE OF THE CHIEF EXECUTIVE
P/Bag 5549
Ongwediva
03 JUL 2024
Tel: 065 233 700
Fax: 065 230 521
ONGWEDIVA TOWN COUNCIL