

1924

KENYA

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C. O.  
52837  
10 NOV 24

DATE

Dec. 10. 1924

Sutton,  
Murray &  
Blair

REGULATION 1-

Reconstruction of Magadi Soda Coy.

Draft Leases

U.S. of S.

U.S. of S.

U.S. of S.

Secretary of State.

Encloses 3 copies each of the revised draft  
Part & Rly. Leases & comments upon alterations  
made.

Previous Paper

73.97

52423

MINUTES

See now on 11,53710/24.

GD. 18/11/24

3370

Subsequent Paper

1/53710

SAVING COMPANY & BANKERS

10, ABchurch Lane, LONDON, E.C. 4.

TELEGRAMS: "SAVING" LONDON

TELEPHONE: 10 1222

TELEPHONE: 10 1212 LONDON WALL

52837

322

3 & 4, GREAT WINCHESTER STREET

LONDON, E.C. 2.

21st Nov., 1924.

18  
31876/1924

*Stevya*  
Sir,

Magadi Soda Company Ltd.

With reference to Mr. Oliver's interview with you at the Colonial Office on Monday last, we have now revised the draft Lease in accordance with the instructions you then gave him and we have pleasure to hand you herewith three revised prints.

We desire to refer particularly to the following points:-

A. With regard to both Leases. We have eliminated the definition of "Governor's Day" appearing on the earlier draft so as to make both the Lease and the period of five years commence on the same date and in accordance with your suggestion fixed 31st October as the accounting date in each year.

There are a number of amendments in both Leases which are consequent upon this alteration.

After further consideration we did not think it

-2-

practicable to define "calendar year" in the manner suggested at the interview. Such a definition would have involved making a period of less than a year equal to a calendar year by definition, and in view of the prior meaning of the words "calendar year" as they stand we think such a definition might lead to confusion in construction.

The term in both Leases might be fixed as 99 years from 31st October 1924. This could be arranged whenever the Leases are actually signed. The only inconvenience would be a broken period of rather less than a calendar year for the first accounting period.

B. With regard to the Port Lease,

In Clause V.b. the minimum payments are calculated according to the minimum workings at the lowest royalty i.e. 2/- per ton of raw soda. The result of this is to make the minimum royalty for the year payable by equal half yearly instalments. The lessees may have to pay some sum in advance in the first half year but they are not to be made to pay more than is due for the whole year. The dates

are shown in the following table:

Period ending	Date for payment of royalties for that period	Yearly minimum working	Royalty at 2/- per ton
Apr. 30 1930	Oct. 1.	75,000 tons	37,500 = £3,750
Oct. 31 1931	Apr. 1.	"	"
Apr. 30	Oct. 1	"	"
Oct. 31 1932	Apr. 1	"	"
Apr. 30	Oct. 1.	100,000 tons	50,000 = £5,000

We have struck out the first part of the original

V.b. but should perhaps draw attention to this provision being in the Memorandum of 30th May 1924.

We think that the words added at the end of clause

V.a. commencing "Provided that any breach - - " should express adequately what is desired. It will be remembered that the proviso for re-entry in clause 9 allows 60 days for payment.

c. With regard to the Railway lease. Clause 4(iv).

We have inserted a covenant similar to clause V in the <sup>Lease</sup> Port Lease. The minimum consignments cannot be increased as in the <sup>Lease</sup> Port Lease as that Lease does not oblige the Lessees to consign by rail any quantity whatsoever after the expiration of the first five years of the term.



-4-

Clause 21 Page 15.

We hope the amendment inserted in this clause will be found to express the intention adequately.

We are forwarding these drafts at the earliest possible moment as we understood you desired to have them in hand quickly but we will gladly mark the amendments in red ink or otherwise if this would save you trouble in following them.

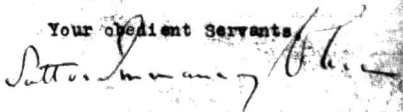
The draft Surrenders of the old Leases will follow as soon as possible. We were obliged to get the Trust Deed for securing the debentures of the Magadi Soda Company Ltd. before drafting these documents. A print of this has reached us to-day.

Mr. Oliver will, of course, be glad to discuss the drafts further with you if you think another interview would be advantageous.

We have the honour to be,

Sir,

Your obedient Servants



The Under Secretary of State,  
Colonial Office,

S.W. 1.

**KENYA COLONY AND PROTECTORATE.**

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*Reverse*

**Lease**

OF

**RAILWAY TO LAKE MAGADI.**

---

DATED

192 ..

---

SUTTON, OMMANNEY & OLIVER,  
3 & 4 Great Winchester Street,  
London, E.C.2.

**KENYA COLONY AND PROTECTORATE.**

**Lease**

OF

**RAILWAY TO LAKE MAGADI.**

\_\_\_\_\_  
DATED 192 .  
\_\_\_\_\_

**SUTTON, OMMANNEY & OLIVER,**  
3 & 4 Great Winchester Street,  
London, E.C.2.

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## KENYA COLONY AND PROTECTORATE.



This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_ 192

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of The Government of the Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the \_\_\_\_\_ day of \_\_\_\_\_ 192, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

Lease of Magadi  
Soda Deposits

And whereas for the purpose of working the said deposits the Lessees or their predecessors in title have at their own expense constructed the railway hereby demised and the port hereinafter defined upon lands provided by the Government.

Construction of  
the Railway and  
the Port

And whereas by an Indenture already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto and in the same order the Port hereinafter defined is intended to be demised to the Lessees from the said \_\_\_\_\_ day of \_\_\_\_\_ 192 during such term as the Magadi Lease shall be subsisting.

The Port Lease

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the Uganda Railway Administration hereinafter defined as part of the Uganda Railway.

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained.

Now this Indenture witnesseth and it is hereby agreed and declared as follows :-

Interpretation

1. In these presents the following expressions or terms shall have the following meanings respectively :-

- (A) " The Colony " means the Kenya Colony and Protectorate.
- (B) " The Government " means the Government for the time being of the Colony.
- (C) " The Governor " means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) " The Uganda Railway Administration " means the Administration or authority for the time being working or managing the Uganda Railway.
- (E) " The Railway " means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (F) " The Lessees' Manager " means the person appointed by the Lessees to manage their business in the Colony.
- (G) " The General Manager " means the General Manager for the time being of the Uganda Railway.
- (H) " The Magadi Lease " means the first before recited Lease of even date herewith.
- (I) " The Magadi Soda Deposit " means the deposits of carbonate of soda included in and demised by the Magadi Lease.
- (J) " The Port " means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

(K) " Soda Goods " means all or any of the following :-

- (1) Raw soda that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (2) Soda that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (3) Soda products that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (4) Manufactured soda that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(L) " Month " means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that Railway constructed by the Lessees or their predecessors in title wholly in the Colony commencing by a junction with the Uganda Railway known as Magadi Junction and thence passing to a terminus near Lake Magadi together with all lands which have been provided by the Government for the purpose of the construction and working of the Railway and are now in the possession of the Lessees or of the Uganda Railway Administration.

Together with full and free right and liberty for the Lessees to construct maintain renew repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either of them in along or over the demised premises or any part or parts thereof Provided always that the right and liberty aforesaid shall not be exercised so as to interfere with the working of the Railway by the Uganda Railway Administration under the provisions in that behalf hereinafter contained.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows :-

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the

Demise of Railway to Lessees

Liberty to Lessees to construct telegraph and telephone lines

Exceptions

All other minerals precious stones etc.

(K) "Soda Goods" means all or any of the following:—

- (i) Raw soda that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) Soda that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) Soda products that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
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*Demise of Railway to Lessees*

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*Liberty to Lessees to construct telegraph and telephone lines*

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

*Exceptions*

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the

*All other minerals precious stones etc*



Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient Provided always that the right and liberty aforesaid shall be exercised in such a manner as not to interfere with the working of the Railway or to cause any subsidence of the Railway or of any building or work connected therewith and provided also that the person or persons exercising such right and liberty shall make good or pay reasonable compensation for all damage thereby occasioned to the demised premises.

To hold unto the Lessees for the term of 99 years from the first day of *November* 1924 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the 1st day of *October* in every year the first of such payments for the first year of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

3. If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall *ipso facto* determine also but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

4. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows:—

Liberty to construct telegraph and telephone lines

(ii) Full and free right and liberty for the Government to construct maintain renew repair and use any telegraph or telephone line or lines for the use of the Government in along or over the demised premises or any part or parts thereof and full and free right and liberty for the Government and persons authorised by them to enter upon and occupy so much of the demised premises as may be necessary for the said purposes or any of them without making any compensation therefor but making good all damage done Provided always that the rights and liberties last aforesaid shall be exercised in such a manner as not to interfere with the efficient working of the Railway

In case of urgency to take possession

(iii) Full and free right and liberty for the Government in any case of urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the whole or any part of the Railway and the rolling-stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the Railway and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

Carriage of military etc

(iv) Full and free right and liberty for the Government at any time or times to have any military marine or police force arms horses guns ammunition baggage or stores mails mail-bags or post office requisites or things conveyed over the Railway or to the Port in priority to any other traffic and in any case of urgency (as to the existence of which the Government shall be the sole judge) with all the resources of the Railway.

(i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid.

(ii) The sole and exclusive control and management of the Railway shall be vested in the Uganda Railway Administration and the following provisions shall have effect:—

(A) The Uganda Railway Administration shall work the Railway as a branch of the Uganda Railway and as part of the general system of railways operated by the General Manager.

(B) The Lessees shall not claim or be entitled to receive from the Uganda Railway Administration any preference or priority whatsoever as to transport or the supply of locomotives or rolling-stock or the maintenance or equipment of the Railway or otherwise howsoever.

(C) The Uganda Railway Administration may at their own expense at any time or times make any alteration or addition to the Railway for the purpose of accommodating traffic other than traffic of the Lessees.

(iii) The Lessees shall pay the charges for freight hereinafter specified at the times and in manner hereinafter provided and shall at all times duly pay all such other charges and all such moneys and do and perform all such acts and things as under the provisions hereinafter in this Lease contained are by them to be paid done or performed.

Lease to determine if Magadi Lease determined

Lessees' Covenants

To pay rent

Sole management of the Railway to be vested in the Uganda Railway Administration

The Railway to be worked as part of the Uganda Railway

No preference to given to Lessees

The Uganda Railway Administration may make alterations and additions to the Railway

Lessees to pay freight and observe the provisions hereinafter contained

*November*





To hold unto the Lessees for the term of 99 years from the first Term  
 day of *November* 1924 if the Magadi Lease shall so long  
 continue to subsist and be effective at the yearly rent of five shillings  
 payable yearly in advance without any deduction on the 1st day of  
 October in every year the first of such payments for the first year of the  
 said term having been made on the execution of these presents as the  
 Crown Agents and the Government hereby acknowledge.

3. If the Magadi Lease shall be determined in any manner Lease to  
 whatsoever then this Lease shall *ipso facto* determine also but without determine if  
 prejudice to any right of action or remedy of the Crown Agents or the Magadi Lease  
 Government in respect of any antecedent breach by the Lessees of any determined  
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4. The Lessees for themselves their successors and assigns hereby Lessees' Covenants  
 covenant with the Crown Agents and also as a separate covenant with the  
 Government as follows :--

(i) The Lessees will pay the rent hereinbefore reserved at the To pay rent  
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(ii) The sole and exclusive control and management of the Railway Solo management  
 shall be vested in the Uganda Railway Administration and the of the Railway  
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 Administration

(A) The Uganda Railway Administration shall work the The Railway to be  
 Railway as a branch of the Uganda Railway and as part worked as part of  
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(B) The Lessees shall not claim or be entitled to receive from No preference to  
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 priority whatsoever as to transport or the supply of  
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 equipment of the Railway or otherwise howsoever.

(c) The Uganda Railway Administration may at their own The Uganda Railway  
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 addition to the Railway for the purpose of accommodating tions and additions  
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(iii) The Lessees shall pay the charges for freight hereinafter Lessees to pay  
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 such moneys and do and perform all such acts and things as hereinafter  
 under the provisions hereinafter in this Lease contained are contained.  
 by them to be paid done or performed.

prepared by the solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

- (c) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

- (vii) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof. To give notice of finding any excepted minerals

- (viii) (A) If and whenever any of the demised lands shall in the opinion of the General Manager be or become unnecessary for the purposes of the Railway the Lessees shall at any time thereafter upon the request in writing of the Government forthwith surrender the same to the Government. Superfluous lands

- (B) If any difference shall arise as to whether any land is or is not unnecessary for the purposes of the Railway such difference shall be referred to arbitration under the provisions in that behalf hereinafter contained.

- (ix) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony. To comply with Ordinances

or by the presence of the agents or workmen of the Lessees upon or in the neighbourhood of the Railway pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.

(xvi) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the suitable treatment of native labourers or workmen.

Native labour

5. (i) The Lessees shall (if and so far as the same shall not have been done before the date of these presents) forthwith complete and equip the Railway so as to be efficient to carry at least 160,000 tons of soda goods in any one year.

Lessees to complete the Railway to carry 160,000 tons per annum

(ii) The lessees shall do the work aforesaid in accordance with any directions from time to time given by the General Manager and to his reasonable satisfaction in all respects.

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order.

Maintenance

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government or the Uganda Railway Administration to fit, equip or maintain the Railway so as to be capable of carrying more than 160,000 tons of soda goods in any one year.

7. The Lessees shall at their own cost do all and any extraordinary repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained.

Extraordinary repairs

8. (i) The Uganda Railway Administration shall provide and maintain all locomotives and rolling-stock necessary for the efficient working of the Railway.

Rolling stock

or by the presence of the agents or workmen of the Lessees upon or in the neighbourhood of the Railway pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.

(xvi) The Lessees shall at all times during the term hereby granted Native labour comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the suitable treatment of native labourers or workmen.

5. (i) The Lessees shall (if and so far as the same shall not have Lessees to complete the Railway to carry 160,000 tons per annum been done before the date of these presents) forthwith complete and equip the Railway so as to be efficient to carry at least 160,000 tons of soda goods in any one year.

(ii) The lessees shall do the work aforesaid in accordance with any directions from time to time given by the General Manager and to his reasonable satisfaction in all respects.

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own Maintenance expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order.

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government or the Uganda Railway Administration to fit, equip or maintain the Railway so as to be capable of carrying more than 160,000 tons of soda goods in any one year.

7. The Lessees shall at their own cost do all and any extraordinary Extraordinary repairs repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained

8. (i) The Uganda Railway Administration shall provide and Rolling stock maintain all locomotives and rolling-stock necessary for the efficient working of the Railway.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.
- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.
- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf, to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.
- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
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- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall at their own expense provide and maintain such tank cars special wagons and conveniences (if any) as the General Manager shall from time to time deem necessary or proper for the carriage of the Lessees' liquid fuel. <sup>^</sup>

9. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt. <sup>new word</sup>

10. The service of loading and unloading the Lessee's goods at the respective places of departure and destination shall in all cases be performed by and at the sole expense of the Lessees but the service (if any) of loading and unloading at any intermediate place shall in all cases be performed by and at the sole cost of the Uganda Railway Administration.

11. The rates of freight for soda goods consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Port by the Railway to Magadi Junction and thence over the Uganda Railway shall be as follows

(A) For the purposes of this Clause each year shall end on the 31st day of October and the part of a year from the commencement of the term hereby granted until the 31st day of October 1925 shall be reckoned as a year and the period from the commencement of the term hereby granted until the 31st day of October 1929 shall be the first period of five years.

(B) During the first period of five years and thereafter until the same shall be increased as hereinafter provided the rates shall be for the first 50,000 tons carried in any year 18s. per ton and for every ton over 50,000 up to but not exceeding a total of 150,000 tons carried in the same year 17s. per ton and for every ton over 150,000 tons carried in the same year 16s. 6d. per ton.

(c) (i) At the expiration of the first and every subsequent period of five years the General Manager may increase the rate for the time being payable but so that the rates in force during the second or third period of five years shall not exceed the following: For the first 50,000 tons carried in any year 22s. per ton and for every ton over 50,000 up to but not exceeding 150,000 tons carried in the same year 20s. per ton and for every ton over 150,000 tons carried in the same year 18s. per ton.

(ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.

(iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.

(iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.

(v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.

(vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.

(vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.

(viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.

(ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.

(x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

Protection of  
Soda Goods in  
transit

Loading and  
unloading

Rates of freight for  
Soda Goods carried  
to the Port

The rate for each  
year shall



or persons concerning or relating to the subject matter of these presents or any part thereof or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference, and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in reference and his award shall be final and binding upon all parties. All the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

31. The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred

Arbitrators may  
make partial awards

32. The arbitrators and umpire shall have full power to proceed in the absence of both or either of the parties after giving to both parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May proceed  
ex parte

33. The arbitrators and umpire shall have full power to inspect the books documents and accounts of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

May inspect books  
and accounts and  
examine on oath

34. The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

And provide for  
costs



ii.

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KENYA COLONY AND PROTECTORATE.

This Indenture made the day of 192

Between The CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and THE MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office at Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

Whereas the Lessees are desirous of working certain deposits of carbonate of soda at Lake Magadi in Kenya Colony and Protectorate and have agreed to take and the Government have agreed to grant a Lease of the lands and premises hereinafter mentioned for the term and subject to the provisions and conditions hereinafter appearing:

Now this Indenture witnesseth as follows that is to say:—

1. In these presents the following expressions or terms shall have Interpretation the following meanings respectively:—
  - (A) "The Colony" means Kenya Colony and Protectorate. "The Colony"
  - (B) "The Government" means the Government for the time "The Government" being of the Colony.
  - (C) "The Governor" means the Governor for the time being of "The Governor" the Colony or the person for the time being acting as such.
  - (D) "The Magadi Soda Deposit" means the deposits of carbonate "The Magadi Soda Deposit" of soda included in the demise hereby made.
  - (E) "Raw Soda" means carbonate of soda <sup>and</sup> <sub>or</sub> carbonate of "Raw Soda" soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination whether loose or packed.
  - (F) "Soda" means soda ash, carbonate of soda <sup>and</sup> <sub>or</sub> other salts "Soda" of soda as obtained from raw soda as above defined and whether loose or packed.

"Soda Products"  
"Manufactured Soda"  
"Month"  
Demise

- (G) "Soda Products" means soda crystals, caustic soda, bicarbonate of soda <sup>and</sup> or any other commodities or preparations which are recognised as soda products in the chemical industry and whether loose or packed.
- (H) "Manufactured Soda" means manufactured articles or merchandise of which soda or soda products form the essential or main constituents and whether loose or packed.
- (I) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government in consideration of the rent and royalties hereinafter reserved and the covenants and conditions on the part of the Lessees to be observed and performed hereinafter contained hereby grant and demise unto the Lessees First all that rectangular piece of land forming part of the Colony and known as Lake Magadi together with all or any the deposits of carbonate of soda therein which piece of land is situate as near as can be ascertained between latitude 1° 40' and 2° 5' South and extends from longitude 36° 10' East to longitude 36° 20' East and is delineated on the map attached to these presents and thereon surrounded by a red line Together with the land on the shores of such lake necessary for working the said deposit as shown on the said map which premises together include an area of approximately 306 square miles And secondly all that triangular piece of land forming part of the Colony and situate near the Northerly end of the Natron Lake which piece of land includes an area of approximately 18 square miles and lies as near as can be ascertained to the Southward of latitude 2° 5' South and between longitude 36° and 36° 5' East and is delineated on the said map and thereon also surrounded with a red line Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search for dig get win and carry away all the Magadi Soda Deposit Together also with full and free liberty and right for the Lessees their servants and agents of access to the Guaso Nyiro and all reasonable facilities for obtaining and leading water therefrom or thereto for the purposes of their servants or agents and for the purposes of the Lessees' operations and for any other purposes of the demised premises.

And together further with liberty at all times during the said term to do all such things as the Lessees may deem necessary and convenient for the working of the Magadi Soda Deposit and to construct any works ships buildings stores appliances reservoirs water-races roads tramways railways canals and other means of transport in upon over and under the demised lands as they may deem necessary or convenient for effectually exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised lands other than the Magadi Soda Deposit and also other than minerals and mineral substances removed in properly working the Magadi Soda Deposit (all which premises other than as aforesaid are hereinafter included in the term "the excepted minerals") with full and free right and liberty for the Crown Agents and the Government and their lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the excepted minerals and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessees as shall be necessary or convenient And in the course of working to let down the surface of the demised lands and the Magadi Soda Deposit and the workings of the Lessees.
- (ii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.
- (iii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring for sinking to or working the excepted minerals.
- (iv) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left as a support for any pit or shaft which may hereafter be sunk to the excepted minerals.
- (v) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.
- (vi) Such part or parts (not being land which is already occupied by any of the Lessees' works or operations or in respect of which the Lessees establish to the satisfaction of the Governor that the Lessees will need the same for the subsequent development or expansion of their works or operations) of the demised lands as the Government shall from time to time think proper to reserve or allocate for native encampments or any similar purpose.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised lands other than the Magadi Soda Deposit and also other than minerals and mineral substances removed in properly working the Magadi Soda Deposit (all wllch premises other than as aforesaid are hereinafter included in the term " the excepted minerals ") with full and free right and liberty for the Crown Agents and the Government and their lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the excepted minerals and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessees as shall be necessary or convenient And in the course of working to let down the surface of the demised lands and the Magadi Soda Deposit and the workings of the Lessees.
- (ii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.
- (iii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring for sinking to or working the excepted minerals.
- (iv) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left as a support for any pit or shaft which may hereafter be sunk to the excepted minerals.
- (v) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.
- (vi) Such part or parts (not being land which is already occupied by any of the Lessees' works or operations or in respect of which the Lessees establish to the satisfaction of the Governor that the Lessees will need the same for the subsequent development or expansion of their works or operations) of the demised lands as the Government shall from time to time think proper to reserve or allocate for native encampments or any similar purpose.

Yearly minimum workings

(v) (A) Without prejudice to or in any way limiting the covenant by the Lessees lastly hereinbefore contained the Lessees will in each of the years ending on the 31st day of October 1927, 1928 and 1929 get and despatch by Railway not less than 50,000 tons of raw soda ~~and soda products~~ and in the year ending on the 31st day of October 1930 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will ~~export or sell and deliver or use for commercial purposes within the Colony~~ raw soda ~~soda~~ or soda ~~products or soda~~ contained in manufactured soda as follows: in each of the years ending on the 31st day of October 1930 and 1931 not less than 75,000 tons and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October not less than 100,000 tons, and no excess of tonnage of any preceding year shall be allowed towards making up a deficiency in any subsequent year. Provided that any breach of this covenant not due to *force majeure* arising from any of the causes mentioned in Clause 14 hereof shall be waived if the Lessees shall within 60 days from and after the day hereby appointed for payment of royalty in respect of the period during which such breach shall have occurred pay the amount which would have been payable for royalty in respect of the said period if the Lessees had truly performed this and the immediately preceding covenant.

Half yearly minimum payments

(B) The Lessees will pay to the Government or as they shall direct by way of royalties on each of the following days namely the 1st day of October 1930 the 1st day of April and the 1st day of October 1931 and the 1st day of April 1932 a sum not less than £3,750 and on each 1st day of October and 1st day of April thereafter during the continuance of the term hereby granted a sum not less than £5,000.

To pay for soda lost or wasted

(vi) The Lessees will in case of any waste or unnecessary loss of raw soda by or through any mismanagement or default of the Lessees pay for the raw soda so wasted or lost as if the same had been actually got and exported.

To leave soda unworked for support

(vii) The Lessees will leave such quantities of the Magadi Soda Deposit unworked and in such positions for the support of any building now or hereafter to be erected on the demised lands or of any pit or shaft hereafter to be sunk to the excepted minerals as the Crown Agents or the Government or their Lessees or any person authorised by them may reasonably and properly require.

(viii) The Lessees will not cause or permit any unnecessary or reasonably avoidable obstruction or interruption to the development by the Crown Agents or the Government or their Lessees or any person authorised by them of the excepted minerals or to the transport conveyance or conversion of the produce thereof or to the exercise or enjoyment of any right or liberty excepted out of the demise hereby made or hereby reserved.

Not to obstruct working of excepted minerals

(ix) The Lessees will keep all roads tunnels watercourses tramways railways engines fixed machinery and other works and conveniences belonging to or used in connection with the Magadi Soda Deposit in good and substantial repair and condition and working order so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit.

To keep works in repair

(x) The Lessees will permit the Crown Agents and the Government and any person or persons authorised by them or either of them in this behalf at all reasonable times to enter upon inspect and examine the demised lands and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and manner of working and managing the same or for any other reasonable purpose. And will cause all such persons to have all such assistance as they may reasonably request from the employees of the Lessees.

To permit entry and view

(xi) The Lessees shall comply with all obligations which may be imposed on them by any general Ordinance for the time being in force in the Colony except only in so far as any such Ordinance shall impose or purport to impose upon the Lessees an export duty on raw soda soda soda products or manufactured soda.

To comply with Ordinances

(xii) In the construction of any works which may interfere with the traffic in any road street path or footway or with any rights of water or other rights or properties the Lessees shall not interfere with public and private conveniences and rights more than may be reasonably necessary and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as may be necessary or proper for the prevention of damage or injury to any property or person

Not to interfere with public or private rights

- (xviii) If the Government shall incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees' works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.
- As to liability for special sanitary
- (xix) The Lessees shall provide at or near the site of their works such huts or other accommodation for the use of the native labourers or workmen employed in the Lessees' works and also such hospitals medical officers and attendants medicines and medical stores for the like use as may be necessary.
- Huts or other accommodation hospitals and medicines for use of natives to be provided
- (xx) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the proper treatment of native labourers or workmen.
- Native labour
- (xxi) The Lessees will at all times during the term hereby granted observe the following provisions :-
- As to user of roads and facilities for travellers
- (A) They will allow all roads made by the Lessees upon the demised premises to be used for the public service except roads inside or around their works.
- (B) They will permit travellers to encamp with their servants animals waggons and baggage for a period not exceeding 48 hours on any part of the demised premises which is uncultivated and which is not within one mile of any works or dwelling house and allow travellers and their servants and animals access to any river stream or lake upon the demised premises outside of the Lessees' works.
- (xxii) The Lessees will at the expiration or sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except so far as the Magadi Soda Deposit shall have been worked out under these presents and except also such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Magadi Soda Deposit.
- To deliver up

- (xviii) If the Government shall incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees' works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor. As to liability for special sanitary measures
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- (c) Not more than one person shall at any one time be entitled to hold office as a Director by virtue of appointment hereunder.
- (d) Any such appointment shall be in writing under the hand of the Governor and served on the Lessees.
- (e) A Director appointed hereunder shall not require any qualification.
- (f) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.

(xxv) (A) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised lands the Lessees shall forthwith give notice thereof to the Government.

To give notice of finding any excepted mineral

- (B) If any excepted mineral so found can be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall get the same without injury thereto accordingly and hold the same for the Government and both in and after getting the same the Lessees shall take all reasonable steps for the safe preservation of the same.
- (c) If any excepted mineral so found cannot be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall forthwith upon any such discovery cease working so far as necessary for the preservation of the thing found and shall leave their workings at and adjacent to the thing found open for a period of one month for the inspection thereof by the Government and thereafter shall not continue working at or adjacent to the thing found except in accordance with any reasonable instructions given by the Government for the purpose of avoiding injury to the thing found.

6. Provided always and these presents are upon the express conditions following:—

- (i) The Lessees and any Company or Corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such Company or

Lessees to be and remain British

- (c) Not more than one person shall at any one time be entitled to hold office as a Director by virtue of appointment hereunder.
- (d) Any such appointment shall be in writing under the hand of the Governor and served on the Lessees.
- (e) A Director appointed hereunder shall not require any qualification.
- (f) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.

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- (B) If any excepted mineral so found can be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall get the same without injury thereto accordingly and hold the same for the Government and both in and after getting the same the Lessees shall take all reasonable steps for the safe preservation of the same.
- (C) If any excepted mineral so found cannot be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall forthwith upon any such discovery cease working so far as necessary for the preservation of the thing found and shall leave their workings at and adjacent to the thing found open for a period of one month for the inspection thereof by the Government and thereafter shall not continue working at or adjacent to the thing found except in accordance with any reasonable instructions given by the Government for the purpose of avoiding injury to the thing found.

6. Provided always and these presents are upon the express conditions following

- (i) The Lessees and any Company or Corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such Company or Lessees to be and remain British

8. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of forty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) the Crown Agents or the Government may enter into and upon any of the demised premises or any adjoining or neighbouring lands or works for the time being held occupied or used by the Lessees together or in connection with the demised premises and may seize and distress and sell as landlords may do under the laws of England for rent in arrear all or any of the Raw Soda then got and the Soda, Soda products and Manufactured Soda there found and the engines machinery plant animals implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rent and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

Power of distress

9. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of Sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter to re-enter into and upon the demised premises or any part thereof in the name of the whole and to have again re-possess and enjoy the same as in their former estate. And thereupon this Lease and the liberties hereinbefore granted shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein

Proviso for re-entry

8. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of forty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) the Crown Agents or the Government may enter into and upon any of the demised premises or any adjoining or neighbouring lands or works for the time being held occupied or used by the Lessees together or in connection with the demised premises and may seize and distrain and sell as landlords may do under the laws of England for rent in arrear all or any of the Raw Soda then got and the Soda, Soda products and Manufactured Soda there found and the engines machinery plant animals implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rent and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

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agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

15. In case and so often as any dispute difference or question shall arise between the said parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies or persons concerning or relating to the demised premises or the Lessees' works or any part thereof respectively or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained in this Lease or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid under these presents or any such award as aforesaid then (except in any case and as to any matter for which other provision is hereinbefore made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any such dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding on all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

Provision for Arbitration

16. The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

Arbitrators may make partial awards

17. The arbitrators and umpire shall have full power to proceed in the absence of both or either of the parties after giving to both parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May proceed *ex parte*

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May proceed in absence of parties

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May proceed ex parte



May inspect books  
and accounts and  
examine on oath

18. The arbitrators and umpire shall have full power to inspect the books documents and accounts of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

And provide for  
costs

19. The costs of the reference and the awards shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

Marginal notes  
not to affect  
construction

20. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In witness whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their Common Seal to be hereunto affixed the day and year first above written.

Signed sealed and delivered by

one of the Crown Agents for the  
Colonies in the presence of

The Common Seal of The  
Magadi Soda Company Limited  
was hereunto affixed in the  
presence of

} Directors.

Secretary