

1925

KENYA

453

26430
REC^d
RE. 23 JUN 26

Date
19th June 1925.

MUTTON, OSMANNEY AND
OLIVER.

MAGADI SODA CO.

Fwd revised draft lease relating to
Railway and Lake. Copies have been sent to the
Company for approval. Return plans.

Previous Paper

MINUTES

The Clauses which the SO^m have am^d
added to the lease in receipt of C.O. letter
on 20/6/25 appear to be all right. &
the particular Clause 3 of the Lake lease
now meet our wishes (See (b) of our minute
on 21/6/25). Except that the words
they in line 3 of Cl. 5 (iv) of the Lake
lease must be deleted. There is no
comment to offer; but I tabulate
for convenience the Clauses which
have now received further amendment
of the lease

- Clause 4. new rider
- Clause 5. new Clause 6.
- Clause 6. v. c. (see above)
- Clause 6. ~~200/210~~ (see Cl. 15)
- Clause 15. (new)

19 AUG 1925

Copy given to So. Y9?
Hild & copy sent (can)

Subsequent Paper

V.A.C. 30201

Railway lease

Clause 7. (new under)

Clause 4 (1)(c)

Cl 4 (a)(i) & (xviii) (new)

Clause 29.

The Sol^{rs} have not amended Clause 6 & Clause 20(B) of the lease of the Railway. See para 12 of the letter to the Nagadi Coy on 20.6.25

There is some force in what they say, that Cl. 6 operates to the advantage of the Rly, which it would do not do to so great an extent if it were amended by substituting "additions and betterments" for "extraordinary repairs and renewals". Further, on the Sol^{rs} say, the making of additions & betterments would be ~~the~~ a matter of agreement. Mr Bottomley writes on 20.6.25 (of 27.5.25) says we should have done better to keep to the form of the old Contract which has, as chargeable to capital, (& therefore to be borne by the lessees) "substantial alterations, additions and improvements to old works". This would seem to provide (at any rate in Cl. 20(B)) what the Cr. Ct. wants.

The Sol^{rs} have now sent the lease to the Coy without any amendment

is that
have said
through

(Contra
Clause)

of either Clause 6 or Clause 20(B) and perhaps it will be as well to wait for the Company to have their say in this matter.

Mean while.

Tack, says SFS is awaiting a reply from the Coy. to his letter of 1 June, and points out the small correction necessary in Cl. 5 of the ~~the~~ lease. (Better wait before sending a copy to the Coy, until we have the Coy's reply)

SFS

26.6.25

I agree - and have left a copy for Mr. Burke.

Cl. 29.6.25
alace

Lester

SUTTON, OSMANNEY & OLIVER.

E. S. OLIVER.

H. M. OSMANNEY.

TELEGRAPHIC ADDRESS: "SUNSHINE", LONDON.

TELEPHONE: 57 1222 & 57 1218 LONDON WALL.

C O
28430

REC^d
RE. 23 JUN 25

Be

456

3 & 4, GREAT WINCHESTER STREET,

LONDON, E.C.2.

20686/25

19th June, 1925.

Sir,

Nagadi Soda Company Limited.

20686/25
With further reference to your letter of last instant and its enclosures we have now revised the draft leases in accordance with your instructions and have forwarded them to the Nagadi Soda Company Limited for approval.

-3- As requested we beg to hand you herewith three prints of the revised leases, showing the amendments made by the Company in red ink and the counter amendments made by us in green ink.

-- We also enclose herewith a copy of the letter we have written to the Company with the draft leases, and we -- return the plans which accompanied your letter.

With regard to the further amendments which have been made since you last considered the drafts we have to offer the following remarks:-

(1) Lease Clause 4

We have altered the number of this clause to 3 as it seems more properly to belong to this position in the

-2-

lease and does not split the clause relating to the royalties.

(2) We have perused the King's Registration of titles Ordinance referred to in your letter of 2nd instant and agree that the alterations in the forms of the leases necessitated thereby should be made in the policy when no doubt they have a settled practice with such matters.

We have also left the determination of the several premises to be altered in the Colony.

(3) We have inserted a covenant by the lessees in both Lake Lease and Railway Lease for surrender of the leases in exchange for new leases after the Government survey has been made.

(4) With regard to the water supply agreements:

As the water supply appears primarily to be for the railway we have inserted the new provisions both in the Lake Lease and in the Railway Lease. Our additions consist of an addition to the preamble and a further covenant by the lessees.

The benefit of these two agreements should be

-3-

assigned by the liquidator of the old Company to the new Company in order to keep them alive. This assignment can be included in the assignment mentioned in paragraph 3 of your letter to the Company of 1st June 1925.

(5) With regard to paragraph 12 of your letter to the Company the General Manager of the Uganda Railway appears to me to have misunderstood the purpose and effect of clause 7 (now clause 6) of the Railway Lease. Under the preceding clause the Uganda Railway undertakes the maintenance of the railway which, of course, includes ordinary repairs. In order to safeguard the railway administration the clause in question has been added in order to throw the cost of extraordinary repairs and alterations upon the lessee.

The term "extraordinary repairs" is one in common use and means repairs rendered necessary by some extraordinary event, such as an extraordinary flood washing away some parts of the line.

The clause cannot be usefully altered to "betterments and additions" as the making of these would be

-4-

a matter of agreement between the lessee and the Uganda Railway administration.

We suggest that the following clause should be substituted for clause 7 (now 6)

"The cost of betterments and additions to the railway shall be borne by the lessee and the lessee shall at their own cost execute and do all such betterments and additions to the railway as the General Manager shall from time to time reasonably request."

But the clause as it now stands appears to be in favour of the Uganda Railway administration. We have thought it best to leave it and to wait some suggestion from the lessee to whom it appears to be unfavourable.

When, however, we consider clause 21 (now clause 20) and sub-clause B, clause 7 (now 6) operates to the disadvantage of the Government and if any alteration has to be made, we suggest that the following sub-clause be substituted for sub-clause B

-5-

"All sums expended by the Lessee with the
 "consent of the Government after the date hereof and
 "prior to the date of the notice exercising the option
 " upon betterments and additions to the railway"

The most favourable alteration would be to leave
 clause 7 and to alter clause 21.3 as suggested above but the
 lessee would probably protest against this.

(6) We have made a slight alteration in clause 3
 V.3 on page 5 in the Lake lease and a corresponding alteration
 in clause 15 page 14 and like alterations in the Railway
 Lease.

(7) We have made a few other slight alterations
 such as in the arbitration provisions which we have included
 in one clause instead of five separate clauses. We think
 that these slight alterations will be obvious to you on
 looking through the drafts.

We have the honour to be,

Sir,

Your obedient servants

The Under Secretary of State,
 Colonial Office,
 S.W.

Arthur James Agnew

COPY.

3 & 4, Great Winchester Street,

LONDON, E.C.2.

20th June, 1925.

Dear Sir,

Kenya Colony
 Crown Agents for the Colonies and
 Magadi Soda Company Limited
Leases of Lake Magadi and Railway to Lake Magadi.

In accordance with instructions received from our clients the Crown Agents for the Colonies we beg to return herewith the two draft Leases approved by them subject to our revisions and marginal notes in green ink. You will, however, note that both drafts are still subject to the final approval of the Governor of the Colony.

With regard to both leases certain further revisions have been made as the result of correspondence between your Company and the Colonial Office.

We cannot agree that there is any agreement as seems to have been assumed by you, that the new Leases should be in precisely the same form as the old Leases. Our clients are obliged to modify their forms from time to time in the light of new experience and according to circumstances and such modifications must be accepted by the Company.

With regard to the Lake Lease, we have to point out that several of the new clauses struck out by you are due

Mr. Seel 30.6.25

Mr. Bushe 1/7

Mr. Bottomley 1.7.25

Mr. Strachey

Mr. J. Shackleton

Mr. O. Davis

Mr. G. Grindley

Mr. J. Masterton Smith

Mr. Ormsby-Gore

Mr. Amery

Handwritten initials/signature

Handwritten mark



DOWNING STREET,

3 July, 1925.

DRAFT.

MRS. Sutton, Ommamey and Oliver, ^{Bas} Bentlegan,

Handwritten notes:
19 AUG 1925
copy to Gen 792
33724/26

I am etc., to acknowledge the receipt of your letter of the 19th of June, transmitting prints of the revised leases of Lake Magadi and the Magadi Railway, and to inform you that he proposes to await a reply to the letter from this Department of the 1st of June, addressed to the Magadi Soda Company, before taking any further action with regard to these draft leases.

2. I am, however, to observe that in view of the insertion of the words "the Government" on line 3 of Clause 5 (ii) of the Lake lease, the word "they" on that line should be deleted.

I am, etc.,

(Signed) W. O. BOTTOMLEY.

KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED

192

SUTTONS, 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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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 Port Lease" means the second before recited Lease.
- (J) "The Magadi Soda Deposit" means the deposits of carbonate of soda included in and demised by the Magadi Lease.
- (K) "The Magadi Pier and Depot Works" 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.

- L
- (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.
 - (iv) "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.

M

(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 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.

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.

- Labels 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 ^{such} 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 stores
- (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.

To hold unto the Lessees for the term of 99 years from the 1st day Term 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 November 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. Lease to determine if Magadi Lease determined

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

- (i) The Lessees will pay the rent hereinafter reserved at To pay rent 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: Sole management of the Railway to be vested in the Uganda Railway Administration
- (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. The Railway to be worked as part of the Uganda Railway
- (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. No preference to be given to Lessees
- (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. The Uganda Railway Administration may make alterations and additions to the Railway
- (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. Lessees to pay freight and observe the provisions hereinafter contained

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.

- (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.
- (iii) Full and free right and liberty for the Government in any case of ^{case} urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or 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.
- (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 ^{state} urgency (as to the existence of which the Government shall be the sole judge) with all the resources of the Railway.

Liberty to construct telegraph and telephone lines

To use of urgency to take possession

Carriage of military

To hold unto the Lessees for the term of 99 years from the 1st 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 November 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.

Lease to determine if Magadi Lease determined

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

Lessee's Covenants

- (i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid. To pay rent
- (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. Sole management of the Railway to be vested in the Uganda Railway Administration
 - (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. The Lessees shall not be preferred as regards the Uganda Railway
 - (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. The Uganda Railway Administration may make alterations and additions to the Railway
- (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. Lessees to pay freight and observe the provisions hereinafter contained

Yearly minimum commitments by rail

(iv) (A) The Lessees will in each of the years ending on the 31st day of October 1927 1928 and 1929 despatch by railway not less than 50,000 tons of soda goods 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 despatch by railway soda goods 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.

(b) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated to be despatched by railway for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding year shall be allowed towards making good a deficiency in any subsequent year.

(c) Provided always and it is hereby agreed that any breach of the covenant contained in Sub-clause (A) above not due to force majeure ~~shall be waived~~ ^{as hereinafter stated} the clause mentioned in Clause 50 hereof shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for freight for the period in respect of which such breach shall have occurred if the Lessees had duly performed the covenant contained in Sub-clause (A) above.

To deliver up *St*
in Clause 11

(v) 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 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 hereon contained and in proper order for the future working of the Railway.

Not to assign without license

Not in old lease
St as drafted

(vi) (A) The Lessees shall not assign underlet or part with the possession of the demised premises ~~or any part thereof~~ (except to the Uganda Railway Administration in accordance with the provisions hereof) ~~for suffer any corporation other than the Lessees or any person to occupy the demised premises or any part thereof~~ ^{with a license} without the previous consent in

writing of the Crown Agents but such consent shall not be unreasonably withheld.

(b) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be 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 herebefore 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

not in old lease
St

(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

As in old lease

RIDER TO PAGE 9.

has not always that of the Lessees do not agree with the opinion of the Local Manager

(B) *if any difference shall arise as to whether any land is or is not immediately a prospect* 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.

(x) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as little as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property.

(xi) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents, damages, claims and losses which may occur or be incurred or claimed in or by reason of anything done upon the demised premises or any part thereof *by the Government* and if the Government shall make any payment in respect of such damages, claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government but this clause shall not extend to any accident, damage, claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the Uganda Railway Administration unless the same shall have arisen from some neglect or default of the Lessees.

(xii) The Lessees shall at all times provide a suitable office on the site of the Railway or the Uganda Railway where notices may be left for or addressed to the Lessees.

(xiii) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees.

(xiv) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance

(xyii) (A) If and when the demised lands shall have been surveyed by or on behalf of the Government the Lessees shall at any time thereafter upon the request in writing of the Crown Agents or the Government forthwith surrender this Lease and accept in exchange therefor a new Lease containing a proper description of the property ascertained by such survey.

(B) The New Lease shall be for the residue then unexpired of the term hereby granted and shall contain as nearly as may be the same terms and provisions in all respects as this Lease and any difference between the parties as to the form of the new Lease shall be settled by the Governor whose decision shall be final.

(C) The Lessees will pay the costs of the Crown Agents and the Government of and incidental to the preparation and execution of the Surrender and new Lease.

(D) The Surrender shall be and shall be expressed to be 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 contained.

(xviii) (A) To perform and observe the agreements on the part of The Nagai Soda Company Limited (being the hereinafter mentioned Company whose assets the Lessees have acquired) contained in the two hereinafter mentioned Agreements of the 15th day of March 1915 and the 2nd day of February

transfer
charge
w
with
cost
date.

apply
etc.

Not to interfere
with public or
private rights

To indemnify
Government
against claims

Contracting to
provide office

No arms or
ammunition to be
sold to natives

No spirituous liquor
to be sold to natives
not imported except
for Europeans

*Get as drafted except
that the words
"prospective" are
deleted*

exp. on out lease

*except
diak on*

to comply with
Ordinances

in order to claim

with and subject to such rules as may from time to time be made by the Governor in that behalf.

- (xv) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Railway 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 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.

As to liability of Lessees to special sanitary measures

- (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 so 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.

Is this necessary? Has not the Railway been entirely completed?

(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.

We are not instructed that the Railway has been completed

(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

Extraordinary repairs

are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained.

Rolling stock

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

(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. Provided nevertheless that the Lessees shall not be entitled to any ^{special} reduction of freight on liquid fuel by reason of the provision of any cars provided by the Lessees.

Protection of Soda Goods in transit

8 8. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt.

Loading and unloading

9 9. 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.

Rates of freight for Soda Goods carried to the Port Moresby
via the
Trove

10 10. 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 Moresby 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.
- (b) In each year during the first period of five years and thereafter until the same shall be increased as hereinafter provided the rate shall according to the total weight of soda goods carried be as follows:—

TOTAL WEIGHT CARRIED.	RATE PER TON FOR EVERY TON CARRIED.
Not exceeding 50,000 tons	18. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 0d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons respectively the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be.

- (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 rate in force in each year during the second or third period of five years shall not exceed the following:—

TOTAL WEIGHT CARRIED.	RATE PER TON FOR EACH TON CARRIED.
Not exceeding 150,000 tons	20s. 0d.
Exceeding 150,000 tons	18s. 0d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 150,000 tons the amount payable in respect of freight shall not be less than the amount which would be payable on 150,000 tons.

- (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. *or decreased as hereinafter 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.

Rates for other goods and fares for passengers

11. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Uganda Railway.

Freight to be payable in advance

12. (i) All freight charges shall be payable to the Uganda Railway Administration in advance. *if the Lessee's desire it the same shall be payable to the account which shall be opened by the Lessee in the administration of the Railway.*

(ii) Any freight charge not paid in advance shall carry interest until actual payment thereof at the following rates that is to say during the first six months from and after the day on which the same should have been so paid in advance at the rate of 14 per cent. per annum and thereafter at the rate of 16 per cent. per annum.

(iii) The Lessees shall procure the payment of all freight charges not paid in advance to be secured by guarantees to the satisfaction of the Crown Agents.

Demurrage

13. The Lessees shall pay demurrage on trucks belonging to the Uganda Railway Administration according to the rates of the Uganda Railway Administration for the time being in force.

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

Lessees to be and remain British

- (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 corporation as aforesaid shall at all times be and remain British subjects.

- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

15 The Crown Agents hereby covenant with the Lessees as Lessees' Covenants

follows:—

- (i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

For quiet enjoyment

- (ii) That the Uganda Railway Administration and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the Uganda Railway Administration or the General Manager.

For acts to be done by the Uganda Railway Administration

(11) Rider

- 12 Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days

Proviso for re-entry

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 re-construction 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 ~~into and upon the demised premises for any part thereof in the name of the Lessees to re-enter and the same to have again re-possessed and enjoy as in their former estate.~~ And thereupon this Lease 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 contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

At end of the 99 years term the Railway and all assets to belong to the Government

17 18. At the expiration of the term of 99 years hereby granted (but not on the ~~several~~ determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

Option to the Government to purchase on sever determination

18 19. ~~under clause 15 (b) or (c) of the lease~~ If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

Option to the Government to purchase at any time

19 20. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

See clause 17
letter drafted

As in old
lease as amended
to the Government

Let. as drafted

Rights of purchase
not to prejudice
other rights

22. The rights of purchase ^{hereinbefore} conferred on the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

Notice of these
provisions to be
endorsed on
debentures

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Property to be
conveyed free from
incumbrances

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

General Manager
may delegate

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

Members or officers
of Government not
to be personally
liable

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of the
Governor

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be
given to Lessees

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees

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 re-construction 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 ^{and upon the demised premises for any part thereof in the name of the whole to re-enter and the same to have again re-possess and enjoy as in their former estate.} And thereupon this Lease 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 contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisions for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

19. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

See clause 17. This is drafted.

At end of the 99 years term the Railway and all assets to belong to the Government

Option to the Government to purchase on earlier determination

Set. as drafted

Option to the Government to purchase at any time

and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

(i) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

(A) The right to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted.

(B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed.

(C) The right to have the Railway with all necessary rolling stock and other equipment and the telegraph and telephone wires and apparatus in accordance with the Price of the Railway Act, 1905, worked and managed as if the Lessees were the owners thereof.

(D) The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

(1) The sum of £... being the agreed amount of the capital outlay made by the Lessees in the construction of the Railway prior to the date hereof.

(2) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon extraordinary repairs and renewals properly attributable to capital expenditure.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows:— If and whenever in any year ending on the 31st day of October during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and eightpence and five-eighths of a penny per ton on the freight despatched by Railway during that year and the amount payable by way of royalties under the Magadi Lease (provided that for the purpose of this Clause such royalties shall be deemed to be payable from the date of these presents) then and in any such case the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with half-yearly rests from the expiration of the year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

21. The option of purchase conferred by Clauses 18 and 19 of these presents shall not extend to any land which may have been acquired by the Lessees under clause 16 of these presents.

Telegraph and telephone lines

As in old lease

Carriage of goods

at the rates hereinbefore prescribed

Price of the Railway Act, 1905

Instructions from the Government as to this sum to given

As in para 17 of Memorandum

Set

Limitation of extent of other

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 corporation as aforesaid shall at all times be and remain British subjects.

(ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British company under British control may refuse their consent to such alteration.

(iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

See Clause 17

¹⁵
16. The Crown Agents hereby covenant with the Lessees as Lessors' Covenants follows:—

(i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

For quiet enjoyment

(ii) That the Uganda Railway Administration and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the Uganda Railway Administration or the General Manager.

For acts to be done by the Uganda Railway Administration

(11) Rider
17. Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days

Proviso for re-entry

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 re-construction 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 said 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 ~~into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again re-possess and enjoy as in their former estate.~~ And thereupon this Lease 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 contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

At and of the
99 years term the
Railway and all
assets to belong to
the Government

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

Option to the
Government to
purchase on sooner
determination

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

Option to the
Government to
purchase at any
time

19. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

See clause 14
This is drafted

As in old
lease as modified
by Memorandum

Set. as drafted

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 re-construction 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 take possession of the demised premises or any part thereof in the name of the whole to re-enter and the same to have again re-possessed and enjoy as in their former estate.} And thereupon this Lease 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 contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisions for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined other than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

19. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

See clause 17. This is drafted.

At end of the 99 years term the Railway and all assets to belong to the Government

Option to the Government to purchase on sooner determination

Set. as drafted

Option to the Government to purchase at any time

and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

(i) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:

If option exercised, the Lessees to have certain rights

(A) The right to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted.

Telegraph and telephone lines

(B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed.

Carriage of goods

(C) The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

- (A) The sum of £ being the agreed amount of the capital outlay made by the Lessees in the construction of the Railway prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon extraordinary repairs and renewals properly attributable to capital expenditure.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows:—If and whenever in any year ending on the 31st day of October during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and eightpence and five eighths of a penny per ton on the freight despatched by Railway during that year and the amount payable by way of royalties under the Magadi Lease (provided that for the purpose of this Clause such royalties shall be deemed to be payable from the date of these presents) then and in any such case the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with half-yearly rests from the expiration of the year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

20. The options of purchase conferred by clauses 18 and 19 of these presents shall not extend to any land which may have been acquired by the Lessees under clause 17 of these presents.

on the company which do not have acquired

As in old lease

The train to haul the Railway with all necessary rolling stock and other equipment. The engine, boiler, and other machinery worked and managed in accordance with the instructions from the Government on this subject can this sum be given now?

Price of these presents

As in para 17 of Memorandum

Limitation of extent of option

44.2
He d

Rights of purchase not to prejudice other rights

22. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

Notice of these provisions to be endorsed on debentures

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Property to be conveyed free from incumbrances

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

General Manager may delegate

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

Members or officers of Government not to be personally liable

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of the Governor

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be given to Lessees

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees

Rights of purchase not to prejudice other rights

22. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

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Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees

or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shewn to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

force majeure that is to say

30. In case and so often as any dispute difference or question shall arise between the 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 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 the reference and his award shall be final and binding upon 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

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

Arbitrators may make partial awards

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.

May proceed
ex parte

32. ⁽ⁱⁱⁱ⁾ 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 inspect books
and accounts and
examine on oath

33. ^(iv) 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

34. ^(v) 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.

Marginal notes

35. ³ 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 here-
unto affixed in the presence of

Directors.

Secretary.

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.

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Marginal notes

35. 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 here-
unto affixed in the presence of

Directors.

Secretary.

KENYA COLONY AND PROTECTORATE.**Lease**

OF

LAKE MAGADI AND OTHER LANDS IN KENYA
COLONY AND PROTECTORATE FOR WORKING OF
SODA DEPOSITS.

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

Written 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 No. ~~45 and 47~~ ^{19 Coleman Street} ~~Distapgate~~ 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.

L. Duke in Rider

And 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 being of the Colony. "The Government"
- (C) " The Governor " means the Governor for the time being of the Colony or the person for the time being acting as such. "The Governor"
- (D) " The Magadi Soda Deposit " means the deposits of carbonate of soda included in the demise hereby made. "The Magadi Soda Deposit"
- (E) " Soda Goods " means all or any of the following : - "Soda Goods"
 - (i) "Raw Soda " that is to say carbonate of soda ^{and} carbonate of soda or 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} other salts of soda as obtained from raw soda as above mentioned.
 - (iii) " Soda Products " that is to say soda crystal caustic soda

bicarbonate of soda ^{and} or any other commodities or preparations which are recognised as soda products in the chemical industry.

- (iv) "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

** Below

"Month"

(I) "Month" means calendar month

Demise

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 Northern 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 the soda and carry away all the Magadi Soda Deposit Together with full and free liberty and right for the Lessees their servants and agents to use the Guzo Nyiro and all reasonable facilities for obtaining and loading 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 any 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

- (F) "The Railway Lease" means the first before recited Lease of even date herewith.
- (G) "The Port Lease" means the second before recited Lease of even date herewith.
- (H) "The Magadi Port & Depot Works" means the pier depot works conveniences and sidings at or near Mbindini included in and demised by the Port Lease.

Take in Rider
The Railway Lease
The Port Lease
The Magadi Port
Depot Works

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 mine 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~~

Let

as in the case

Let as drafted

(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.

as in the case

(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.

Let

(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.

Let

// ~~+~~ So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right

/// ~~+~~ Such parts 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.

as in the case

(vi) 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 lands 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 lands 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 Crown Agents and the Government and their Lessees and persons authorised by them shall exercise the rights and liberties hereby reserved in such a manner as not to interrupt interfere with or affect ~~to an unreasonable extent~~ the working of the Magadi Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

Term

To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 yielding and paying the rent and royalties hereinafter reserved and subject to the provisions hereinafter contained.

Take in
Rider

Fixed rent

3. The Lessees shall during the said term pay the yearly rent of twenty shillings yearly in advance without any deduction on the 1st day of November 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.

Royalties

5 A. (i) Until the 31st day of October 1929 no royalty shall be payable hereunder.

(ii) After the 31st day of October 1929 the Lessees shall on the 1st day of the months of April and of October respectively in each year pay to the Government ^{the Government} or as they shall direct in respect of every ton of Raw Soda Soda or Soda Products and for every ton of soda estimated to be contained in Manufactured Soda the produce of the demised premises which shall be exported from or sold and delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of October or the 30th day of April as the case may be preceding the day appointed for payment the royalties following that is to say

- (A) In respect of every ton of Raw Soda the sum of two shillings per ton.
- (B) In respect of every ton of Soda Soda Products or Soda contained in Manufactured Soda the sum of three shillings per ton.

(vii) 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 lands 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 lands 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 Crown Agents and the Government and their Lessees and persons authorised by them shall exercise the rights and liberties hereby reserved in such a manner as not to interrupt interfere with or affect ~~to an unreasonable extent~~ the working of the Magadi Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

we will use

Take in Rider

Term - To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 yielding and paying the rent and royalties hereinafter reserved and subject to the provisions hereinafter contained.

Fixed rent 4. The Lessees shall during the said term pay the yearly rent of twenty shillings yearly in advance without any deduction on the 1st day of November 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.

Royalties 5. (i) Until the 31st day of October 1929 no royalty shall be payable hereunder.

(ii) After the 31st day of October 1929 the Lessees shall on the 1st day of the months of April and of October respectively in each year pay to the Government ^{the Government} or as they shall direct in respect of every ton of Raw Soda or Soda Products and for every ton of soda estimated to be contained in Manufactured Soda the produce of the demised premises which shall be exported from or sold and delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of October or the 30th day of April as the case may be preceding the day appointed for payment the royalties following that is to say

- (A) In respect of every ton of Raw Soda the sum of two shillings per ton.
- (B) In respect of every ton of Soda Soda Products or Soda contained in Manufactured Soda the sum of three shillings per ton.

(iii) The first payment of royalties hereunder shall be in respect of the period from the 1st day of November 1929 to the 30th day of April 1930 and shall be made on the 1st day of October 1930.

(iv) Raw soda Soda Soda Products and Soda contained in Manufactured Soda on which royalty has been paid by the Lessees shall not be liable to further royalty or duty when exported from the Colony in their original or any manufactured state.

6. 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:— Lessee's Covenants

- (i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. To pay rent and royalties
- (ii) For the purpose of ascertaining the amount of royalties payable hereunder the Lessees will keep proper books of account and the Lessees will keep such books from the commencement of the term hereby granted as if royalties were hereby made payable during the whole of the said term and permit the Government and any agent appointed for that purpose at all reasonable times to inspect the said books of account and to take copies thereof and extracts therefrom. To keep proper books and permit inspection
- (iii) On the 30th day of April and the 31st day of October in each year of the term hereby granted or within 28 days thereafter the Lessees will render to the Government an account showing the amount of Raw Soda Soda Soda Products and Manufactured Soda respectively exported from sold and delivered or used for commercial purposes within the Colony during the six months ending on such 30th day of April or 31st day of October and every such account shall be certified by the auditor or auditors for the time being of the Lessees and an account so certified shall as to the figures appearing in such account be binding on the Lessees. To render accounts
- (iv) The Lessees will forthwith commence and thereafter during the continuance of the term hereby granted vigorously continue to work the Magadi Soda Deposits in a skilful and workmanlike manner to the full extent and to the best economic capacity and to get win and carry away the Magadi Soda Deposit in accordance with the provisions of these presents fairly and properly and according to the best and most approved method of working deposits of carbonate of soda until the expiration or sooner determination of these presents. To work

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 Soda Goods 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 get and despatch by railway Soda Goods 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.
- (B) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not also be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding year shall be allowed towards making good a deficiency in any subsequent year.
- (C) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not due to force majeure arising from any of the causes mentioned in Clause 14 hereof shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for royalty and freight for the period in respect of which such breach shall have occurred, if the Lessees had duly performed the said covenant contained in sub-clause (A) above. For determining such amount the rate of royalty shall be two shillings per ton and the rate of freight shall be that laid down in a ~~Table of Rates~~ Railway to Lake Magadi of even date with these presents and made between the same parties.
- (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.
- (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

To keep for acids
not to be treated

To keep for acids
unworked for
export

Lessees or any person authorised by them may reasonably and properly require.

- (vi) 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
Bar
- (vii) 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
Bar
- (viii) 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
Bar
- (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 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
- (x) 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

or for the due preservation or maintenance of any public or private right or property.

To indemnify Government against claims

(xi) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses which may occur or be incurred or claimed in or by reason of the construction of any works or the use of any plant engines or other appliances in connection therewith and if the Government shall make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government provided that this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of any railway by the administration or authority for the time being and from time to time working or managing the Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees.

Office to be provided for service of notices

(xii) The Lessees shall at all times during the term hereby granted provide and maintain a convenient office at some place on the demised premises at or to which any notices to be given to the Lessees under these presents may be left or addressed.

No arms or ammunition to be sold to natives

(xiii) The Lessees shall not at any time during the continuance of this Lease sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any of their employees to make any such sale gift barter or other disposition.

Native rights

(xiv) The Lessees shall not in any way infringe or interfere with the rights of natives and particularly any native rights of hunting or fishing taking water timber or firewood or collecting or removing Raw Soda from the demised premises for their own purposes.

No spirituous liquor to be sold to natives nor imported except for Europeans

(xv) The Lessees shall not at any time during the continuance of this Lease sell give or barter any spirituous liquor to any native or permit or suffer any such sale gift or barter to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony or any part thereof except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf.

(xvi) 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

(xvii) The Lessee 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 provisions for use of natives to be provided

(xviii) 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

(xix) The Lessees will at all times during the term hereby granted observe the following provisions :-

As to use 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.

(xx) 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

Not to assign
without license

as in Gold Lease
SAR

(xxi)
~~(xxii)~~

(A) The Lessees shall not assign underlet or part with the possession of the demised premises ~~or any part thereof~~ or suffer ~~any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee~~, without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld.

(B) Provided always that the Crown Agents may withhold such consent unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be 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.

The Governor
may appoint one
Director of the
Leases

(xxii)
~~(xxiii)~~

(A) The Governor may from time to time appoint any person to be a Director of the Lessees and may at any time remove such person from being a Director and appoint another person in his place.

(B) The person so appointed shall be entitled to hold office as a Director until he resigns ^(see clause 2) or dies or is removed from office by the Governor whichever event first happens.

the 1st. etc. of Association
which this necessary

X or becomes bankrupt, compounds with his creditors or takes the benefit of any Act for the time being in force for the relief of insolvent debtors or be found bankrupt or becomes of unsound mind

Not to assign
without license

*Use in Gold Lease
Star*

(xxi)
(xxiii)

(A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof for suffer ~~any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee~~ without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld.

(B) Provided always that the Crown Agents may withhold such consent unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be 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 or 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

(xxii)
(xxiv)

(A) The Governor may from time to time appoint any person to be a Director of the Lessees and may at any time remove such person from being a Director and appoint another person in his place

(B) The person so appointed shall be entitled to hold office as a Director until he resigns or dies or is removed from office by the Governor whichever event first happens.

The Governor may appoint one Director of the Lessees

*The 1911 Act of Association
make this necessary*

X or becomes bankrupt, compounds with his creditors or takes the benefit of any Act for the time being in force for the relief of insolvent debtors or be found bankrupt or because of ~~undischarged~~

(xxiv)
Surrender
exchange
new Lease
GOVERN-
SURVEY

(A) If and when the demised lands shall have been surveyed by or on behalf of the Government the Lessees shall at any time thereafter upon the request in writing of the Crown Agents or the Government forthwith surrender this Lease and accept in exchange therefor a new Lease containing a proper description of the property as ascertained by such survey.

(B) The new Lease shall be for the residue then unexpired of the term hereby granted and shall contain as nearly as may be the same terms and provisions in all respects as this Lease and any difference between the parties as to the form of the new Lease shall be settled by the Governor whose decision shall be final.

(C) The Lessees will pay the costs of the Crown Agents and the Government of and incidental to the preparation and execution of the Surrender and new Lease.

(D) The Surrender shall be and shall be expressed to be 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 contained.

(xxv)
Supply
water

(A) To perform and observe the agreements on the part of The Magadi Soda Company Limited contained in the two hereinbefore mentioned Agreements of the 15th day of March 1916 and the 2nd day of February 1916 which Agreements relate to a supply of water from the M'Gong Hills and the Surei Falls and to the construction and maintenance of cattle troughs.

(B) Without prejudice to or in any way limiting the covenant lastly hereinbefore contained forthwith to

- (c) Not more than one person shall at any 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.

(XXII)
 (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
See

(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.

See not in old lease.

(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.

See

7 & 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

Corporation as aforesaid shall at all times be and remain British subjects.

- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such Company or Corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such Company or Corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Lessees or any such Company or Corporation as aforesaid shall at any time cease to be a British Company or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such Company or Corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

Lessee's Covenant

For quiet enjoyment

5. The Crown Agents hereby covenant with the Lessees as follows—

- (i) The Lessees paying the rent and royalties hereby reserved and observed and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or any persons rightfully claiming from or under them.
- (ii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Lake Magadi shall be sold leased or otherwise disposed of by the Government to any person persons or corporation other than the Lessees without first giving to the Lessees the option of acquiring from the Government the whole of the land so proposed to be sold leased or otherwise disposed of on the same or similar terms and conditions as those on which the Government may be willing to sell lease or otherwise dispose of the same to any other person persons or corporation and such option shall be exercisable by the Lessees within one month from and after service upon the Lessees of notice in that behalf.

Lessee to have first refusal of all land near railway

We prefer to have
the provisions in
the Lease of the Railway
as before.

M. S. Co Ltd

Very well

Corporation as aforesaid shall at all times be and remain British subjects.

- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such Company or Corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such Company or Corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Lessees or any such Company or Corporation as aforesaid shall at any time cease to be a British Company or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such Company or Corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

Lessee's Covenant

For quiet enjoyment

8. The Crown Agents hereby covenant with the Lessees as follows—

- (i) The Lessees paying the rent and royalties hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or any persons rightfully claiming from or under them.
- (ii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Lake Magadi shall be sold leased or otherwise disposed of by the Government to any person persons or corporation other than the Lessees without first giving to the Lessees the option of acquiring from the Government the whole of the land so proposed to be sold leased or otherwise disposed of on the same or similar terms and conditions as those on which the Government may be willing to sell lease or otherwise dispose of the same to any other person persons or corporation and such option shall be exercisable by the Lessees within one month from and after service upon the Lessees of notice in that behalf.

Lessee to have first refusal of all land next railway

*See further to be seen
 in provisions in
 the Lease of the Railway
 to be for
 M. S. C. 214
 Very well*

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 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 ~~Soda~~ 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 cost and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

Power of distress

not in old lease

See

10. 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 remedy

contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property or rights in England.

Members or
officers of the
Government not
to be personally
liable

~~11~~ ~~10~~ No member or officer of the Government or the Crown Agents shall be in any wise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance performance or fulfilment of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of
the Governor

~~12~~ ~~11~~ A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to
be given to Lessees

~~13~~ ~~12~~ All notices to be given to the Lessees for the purposes of this Lease shall be in writing under the hand of the Governor or of the Crown Agents or one of them or of some person appointed by them or him and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them on the demised premises or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Notices by the
Government and
Crown Agents

~~14~~ ~~13~~ Every approval or notice to be given or served by or on behalf of the Government or the Crown Agents may be given by writing signed by the Governor or one of the Crown Agents.

Force in law

~~15~~ ~~14~~ Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely the act of God insurrection riots war strikes or combinations or lock-outs of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby

force in law that
is to say

contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property or rights in England.

Members or officers of the Government not to be personally liable

11 +- No member or officer of the Government or the Crown Agents shall be in any wise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance performance or fulfilment of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of the Governor

12 +- A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be given to Lessees

13 +- All notices to be given to the Lessees for the purposes of this Lease shall be in writing under the hand of the Governor or of the Crown Agents or one of them or of some person appointed by them or him and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them on the demised premises or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Notices by the Government and Crown Agents

14 +- Every approval or notice to be given or served by or on behalf of the Government or the Crown Agents may be given by writing signed by the Governor or one of the Crown Agents.

Force in years

15 +- Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely the act of God insurrection riots war strikes or combinations or lock-outs of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby

force in years that as to say

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

Provision for Arbitration

16 +- (i) 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.

(ii)

+- 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

(iii)

+- 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 in part

contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property or rights in England.

Members or officers of the Government not to be personally liable.

~~11~~ ~~10~~ No member or officer of the Government or the Crown Agents shall be in any wise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance performance or fulfilment of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificate of the Governor

~~12~~ ~~11~~ A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be given to Lessees

~~13~~ ~~12~~ All notices to be given to the Lessees for the purposes of this Lease shall be in writing under the hand of the Governor or of the Crown Agents or one of them or of some person appointed by them or him and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them on the demised premises or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Notices by the Government and Crown Agents.

~~14~~ ~~13~~ Every approval or notice to be given or served by or on behalf of the Government or the Crown Agents may be given by writing signed by the Governor or one of the Crown Agents.

Force majeure

~~15~~ ~~14~~ Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely the act of God insurrection riots war strikes or combinations or lock-outs of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby

force majeure that
is to say

May inspect books
and accounts and
examine on oath

^(iv)
~~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

^(v)
~~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

~~17.~~ 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.