

proposal for dealing with the present position.  
stress is ultimately to be decided to withdraw the notice  
& regularise the matter.

Shree

20 x 25

1/1/25

27/10/25

(Kept for Mr Bush's attention)

I have been through the amendments to  
which Mr Seal has drawn my attention, &  
I am inclined to think that substantially  
to be agreed. We ought however  
to think to see through them to get over.

28/10

Mr Seal

Please manage a meeting. Did you  
at 11 o'clock with reference to the  
last 20.10.

20.10.

2-11-25  
LWS

1925

KENYA

515

45746

REF  
10 OCT 25

DATE

9th October 1925.

STON, ORMANNEY AND  
LIVER

MAGADI SODA CO.

Two facsimile prints of the three leases  
showing the various amendments. Comment on Port  
Lease. Will discuss amendments at any time con-  
venient.

Previous Paper

MINUTES

See my table (within) of references to  
the amendments. There occurs no  
need to discuss the amendments with  
the solicitors; but we should  
1. Retain Mr Bush's views on  
the Coy's reiteration of their objection  
to clause 8 of the ~~Port~~ lease of the  
Lake; and also their amendments  
of Clause 3, 4(v), 14(iii), 16, & 18  
of the ~~Port~~ lease, & Clauses 4, 5(iii)  
& 8(iv) of the Port lease.

2. Then the Coy's suggested  
addition to Clause 5(ii) of the Port  
lease will require comment. From 44372/25  
(separate bundle below) it will be seen

Amend. cont - 9 NOV 1925

Amend. - 20 NOV 1925

copy recd x 6 Nov 1925

Subsequent Paper  
P.A.G. 46027

11  
that the local Govt have appointed  
a Dept. Cttee to examine the question  
of installation of oil fuel etc, & that  
pending this Cttee's report the present  
matter is not to be interfered with.

The Argentine Gov's suggestion strikes me  
as being rather a sensible way of  
settling the difficulties which have  
arisen in connection with the ~~BSA~~  
British Imperial Oil (S. Africa) Coy's pipe  
line; & we may perhaps write  
Govt to consider this suggested method  
of dealing with the present position.

~~subject to reason of these two drafts~~

3. The S. Africa Gov's suggestion on page 2  
of their letter, as to the preamble of  
the Port Lease, concerns a matter of  
drafting. It may be accepted.

4. Subject to the above, we may

ack., say S. Africa Gov agrees to their  
proposal as to the preamble of the  
Port Lease, but that he does not  
wish to discuss the amendments at  
present. Say that the draft  
Leases, as amended, will now  
be referred to the Govt. for his opinion of

11  
That the local Gov<sup>t</sup> have appointed  
a Dept<sup>l</sup> Cttee to examine the question  
of importation of oils, fuel etc, & that  
pending this Cttee's report the present  
practice is not to be interfered with.

The Argentine Gov<sup>t</sup>'s suggestions strike me  
as being rather a sensible way of  
settling the difficulties which have  
arisen in connection with the ~~BSA~~

British Imperial Oil (S. Africa) Gov<sup>t</sup>'s pipe  
line; & we may perhaps write  
Gov<sup>t</sup> to consider this suggested method  
of dealing with the present position.

~~subject to sanction of these two points~~

3. The SOI's suggestion on page 2  
of their letter, as to the preamble of  
the Port Lease, concerns a matter of  
drafting. It may be accepted.

4. Subject to the above, we may

ack., say SOI agrees to their  
proposal as to the preamble of the  
Port lease, but that he does not  
wish to discuss the amendments at  
present. Say that the draft  
leases, as amended, will now  
be referred to the Gov<sup>t</sup> for his consent.

29.4.25

COLONY AND PROTECTORATE OF KENYA.

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Lease

OF

PORT, BRANCH RAILWAY LINE, WORKS AND PIER  
AT KILINDINI.

DATED 192

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

## COLONY AND PROTECTORATE OF KENYA.

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

One thousand nine hundred and twenty-\_\_\_\_\_ **Between** THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (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 its registered office situate at No. 19 Coleman Street in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include its successors and permitted assigns) of the other part

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

Lease of Magadi Soda Deposits

And whereas by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the railway commencing at Magadi Junction on the Uganda Railway 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 said Railway have been demised to the Lessees for a term of Ninety nine years from the 1st day of November 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway

The Railway Lease

And whereas

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the Magadi Pier and Depot Works now demised including the Depot Works, Shimanzi Pier and Branch Railway at Kilindini

And whereas 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

In these presents the following expressions or terms shall have the following meanings respectively

(a) "The Colony" means the Colony and Protectorate of Kenya

- (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 General Manager" means the General Manager for the time being of the Uganda Railway.
- (f) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (g) "The Magadi Lease" means the first before recited Lease of even date herewith.
- (h) "The Railway Lease" means the second before recited lease of even date herewith.
- (i) "Month" means calendar month.
- (j) "The Magadi Pier and Depot Works" means the site hereby demised together with Depot Works, Shimanzi Pier and the Branch Railway Line and all works apparatus and conveniences in connection herewith.

2.—The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees all that Depot Works situate at Kilindini known as ~~the Magadi Depot~~ *the Magadi Depot* and the pier adjacent thereto and known as Shimanzi Pier and the Branch Railway Line leading from the Uganda Railway at Kilindini to the said Depot Works together with all appurtenances

and all the land held therewith the boundaries of which are and the site thereof is delineated on the plan in and is thereon coloured and more particularly described in Schedule attached

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

Demise of Depot Works, Shimanzi Pier, Branch Railway Line and conveniences to Lessees

*The exact area of the land cannot be given and an accurate plan cannot be supplied until the questionnaire with in paragraphs 20 & 21 of our letter to the Colonial Office of 23/4/25 are settled*

All other minerals, precious stones, etc.

other similar things lying in or under the demised premises other than carbonate of soda 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 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. *so far as the same can be done without interfering with the Resolite workings of the demised premises or without letting down or causing to be let down the surface of the demised premises*

*See Memorandum Section 6 & clauses 5 & 10 of the old draft Railway Lease*

(ii) Full and free right and liberty for the Government in any case of State 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 demised premises and any rolling stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the same and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

(iii) The full right of passage for any Government <sup>and</sup> public user of railway traffic over the said Branch Railway Line to and from the Uganda Railway to the Government Pier at Kaimindi now under construction. And the full right to divert, take up, relay or in any way alter the said Branch Railway provided that the rights of the Lessees under the lease to the use of the Branch Railway shall not be altered or reduced by reason of any diversion, taking up, relaying or altering of the Branch Railway. And the full right of passage and if and when required the right to construct and maintain a public road of a width of 50 feet between the Depot Works and the foreshore, the said passage <sup>and</sup> road to pass over or under any structure built <sup>and</sup> used by the Lessees between the Depot Works and the Shimanzi Pier as the Lessors may decide. *Provided always that the said passage or road shall not interfere with the said structure or with the efficient working thereof nor shall it be used for any purpose other than the passage of the said structure or with the efficient working thereof nor shall it be used for any purpose other than the passage of the said structure*

To hold unto the Lessees as from the 1st day of November 1924, for a term of 99 years, at a yearly rental of Two hundred and eighty pounds two shillings and sixty six cents of a shilling payable on the 1st day of November every year, and subject to a premium of One thousand one hundred and sixty seven pounds to be paid on the execution of these presents.

*There is no provision to this effect in the Memorandum so far as it refers to the Post Works. We have suggested a sale to the Government of that part of the Branch which serves both our Works and the Shimanzi Pier and any difficulty as to the Premises may be got over in that way.*

*The question of rent is being discussed between us & the Colonial Office*

*which they may demand provided such demand does not interfere with the effective use of the said passage*

3.—If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall *ipso facto* determine also but *subject to the provisions of clause 10 of these presents and 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.—Provided always and it is hereby declared that if and whenever the said rent or any part thereof shall be in arrear for the space of 60 days next after the day when 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 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 repossess and enjoy as in their former estate. *And thereupon this Lease (and the liberties hereby 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 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 a proviso for re-entry contained in leases of similar property in England.*

*Proviso for re-entry*

5.—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:—

*Lessees' COVENANTS*

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

*To pay rent*

- (ii) The Lessees during the said term will not use nor suffer to be used the said Port of Kilindini and the Depot Works, Pier and Branch Railway now demised save and except for purposes directly connected with the concession of the Lessees of the Lake Magadi. In particular that the Lessees will not use nor suffer to be used the said Branch Railway for traffic other than the transportation from and to Shimanzi Pier of things incidental to the exporting of the said soda products nor will use nor suffer to be used the Pier save for the loading of vessels with the said soda products of Lake Magadi and the loading and unloading of coal and oil and other articles required for and incidental to the working of the concession of Lake Magadi and the supplying the said vessels with water and requirements incidental to the loading of the said soda products provided that thereby no harbour dues or other lawful charges are evaded: nor will in any way enter or attempt to enter into competition with the Government Piers. *(See Riders)\**  
*(Subject to the provisions of Clause (c) of the presents) de*
- (iii) 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 herein contained and in proper order for the future working of the Railway.
- (iv) (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) 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, *and the restriction*  
*not apply to underletting for residential purposes only*  
 (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



RIDER to Page 6.

- (ii) The Lessees during the said term will not use nor suffer to be used the said Port of Kilindini and the Depot Works, Pier and Branch Railway now demised save and except for purposes directly connected with the concession of the Lessees of the Lake Magadi. In particular that the Lessees will not use nor suffer to be used the said Branch Railway for traffic other than the transportation from and to Shimanzi Pier of things incidental to the exporting of the said soda products nor will use nor suffer to be used the Pier save for the loading of vessels with the said soda products of Lake Magadi and the loading and unloading of coal and oil and other articles required for and incidental to the working of the concession of Lake Magadi and the supplying the said vessels with water and requirements incidental to the loading of the said soda products provided that thereby no harbour dues or other lawful charges are evaded: nor will in any way enter or attempt to enter into competition with the Government Piers. *(See Riders) x*  
*(Subject to the provisions of Clause 10 of the present Lease)*
- (iii) 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 herein contained and in proper order for the future working of the Railway.
- (iv) (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) 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 and this restriction *not apply to underletting for residential purposes only*  
 (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

Section C of  
 Memorandum and  
 Paragraph 28 of our  
 Letter to Colonial  
 Office dated 23/7/25.

understand that  
 plans for the  
 storage depot of the  
 British Imperial  
 Oil Co. showing  
 the pipe line were  
 submitted by that  
 company in 1923 and  
 approved by Govern-  
 ment Officials.  
 Although the matter  
 is not one primarily  
 affecting us and  
 we really do not  
 care for this clause  
 the Colonial  
 Government object  
 would appear that  
 the Lease affords the  
 best means of raising  
 the question and  
 clarifying the  
 position.

PROVIDED ALWAYS that it shall not be deemed a breach of this clause if part of any cargo of oil which is discharged into the storage tanks on the Lessees premises is used for purposes other than those incidental to the working of the concession of Lake Magadi provided that the discharge of the said cargo is primarily for securing the Lessees requirements incidental to such working and provided that no harbour or other dues payable in respect of any such oil so used for other purposes are hereby evaded.

PROVIDED ALSO that this restriction shall not prevent the user of the existing oil pipe line carried by the Shimanzi Piers and leading to the storage depot of the British Imperial Oil Co., (South Africa) Limited provided no harbour or other dues are hereby evaded.

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.

- (v) 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.
- (vi) 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.
- (vii) 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.
- (viii) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all

To give notice of finding of any excepted minerals

To comply with Ordinances

Not to interfere with public or private rights

To indemnify Government against claims

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 and if the Government shall by reason of the default of the Lessees 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 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.

Directors to provide office

(ix) The Lessees shall at all times provide and maintain a suitable office at some place on the demised premises where notices may be left for or addressed to the Lessees.

No arms or ammunition to be sold to natives

(x) 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.

No spirituous liquor to be sold to natives not in period except for Europeans

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

As to liability of Lessees to special sanitary measures

(xii) 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 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.

(xiii) 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

6.—The Crown Agents hereby covenant with the Lessees that 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. Covenant for quiet enjoyment

7.—The Branch Railway shall be maintained in working order by the Lessees at their own expense as from the 1st day of November 1924, and the General Manager or officers deputed by him shall have the right to inspect the Railway at any time. Lessees to maintain Branch Railway

8.—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.

9.—At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Magadi Pier and Depot Works including the Shimanzi Pier and Branch Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

10.—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 Magadi Pier and Depot Works and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works 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 after the determination of the Lease.

11.—(i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Magadi Pier and Depot Works and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works 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.

(ii) 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 any lines of electric telegraphs and telephone on the Magadi Pier and Depot Works without making any payment in respect thereof.

- (B) The right to have the same facilities over the Branch Railway line as though the same were still in their possession.
- (C) The right to use the Shimanzi Pier and Works for loading and unloading in connection with the soda products of Lake Magadi as though the same were still in their possession.

12.—The price payable by the Government upon a purchase hereunder the exercise of either of the aforesaid rights shall be the aggregate of the two following sums, namely:—

- (A) The sum of £45,115 <sup>the</sup> being agreed amount of the capital outlay made by the Lessees on the construction of the Magadi Pier and Depot Works of the part thereof purchased 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 additions or betterments.

Provided that in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year.

13.—The option of purchase conferred by Clauses 10 and 11 hereof shall not extend to any land which may have been acquired by the Lessees under Clause 15 (ii) of the Railway Lease other than that which is at the date of notice being given to exercise the said option being used for the purposes of the Magadi Pier and Depot Works.

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

15.—In the event of Government purchasing the Magadi Pier and Depot Works or any part of it any sum for the time being outstanding on account of any loans, debentures or debenture stock and the interest thereon shall as from the date when the Government pay the Company the said purchase price cease to be a charge upon the Magadi Pier and Depot Works and shall thenceforth be a charge on the sum payable by the Government to the Lessees and every

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

Option to Government to purchase on sooner determination

Option to Government to purchase at any time

If option exercised the Lessees to have certain rights

Limitation option to purchase

Right of purchase not to prejudice other rights

Provision as to debentures

Redemption of debenture stock and debentures

certificate of debenture stock and every debenture purporting to create or be secured by a charge upon the Magadi Pier and Depot Works shall bear an endorsement to this effect and as to the Government power of purchase hereunder.

Members or officers  
of Government and  
their personal  
liability.

16.—No member or officer of the Government or the Crown Agents shall be in any way 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.

Certificate of the  
Governor.

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

Notions have to be  
given to Lessees.

18.—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 in accordance with circumstances either be delivered to and left for the Lessees at their office (if any) or at the address above mentioned or other the registered address of the Lessees for the time being in England or at their principal or last known place of business in the Colony.

Force majeure.

19.—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 hereunder 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 expressed 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 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.

certificate of debenture stock and every debenture purporting to create or be secured by a charge upon the Magadi Pier and Depot Works shall bear an endorsement to this effect and as to the Government power of purchase hereunder.

Members or Officers  
of Government not  
to be personally  
liable

16.—No member or officer of the Government or the Crown Agents shall be in any way 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.

Certificate of the  
Governor

17.—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 have to be  
given to Lessees

18.—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 in accordance with circumstances either be delivered to and left for the Lessees at their office (if any) or at the address above mentioned or other the registered address of the Lessees for the time being in England or at their principal or last known place of business in the Colony.

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20.—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 (respectively) 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 three arbitrators one to be appointed by each party to the reference, and the third by the two arbitrators to be so appointed or (if such two arbitrators fail for one month after their appointment to appoint such third arbitrator) by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrator or of any two of such 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

21.—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

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

May proceed  
in absence  
of parties

May inspect books  
and accounts and  
examine on oath

23 - The arbitrators and umpire shall have full power to inspect the books, documents and accounts of both parties and 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

24 - 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

25 - 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

May inspect books  
and accounts and  
examine on oath

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

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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



# KENYA COLONY AND PROTECTORATE.

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## 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.

**KENYA COLONY AND PROTECTORATE.**

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OF

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## RIDER.

## LEASE AND LICENSING

The Railway  
Lease.

WHEREAS by an Indenture (hereinafter called "The Railway Lease") already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto and in the same order the Railway commencing at Kagadi Junction on the Uganda Railway and thence passing to a terminus near Lake Kagadi TOGETHER with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway is intended to be demised to the Lessees for a term of ninety nine years from the 1st day of November 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway.

The Port  
Lease.

AND WHEREAS by an Indenture (hereinafter called "the Port Lease") already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto, and in the same order the Kagadi Pier and Depot Works hereinafter defined are intended to be demised to the Lessees for a term of 99 years from the 1st day of November 1924 subject to the payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions herein contained.

*Not now referred to*

# KENYA COLONY AND PROTECTORATE.

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

Between The CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and THE MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office at Nos. <sup>17 Colindale</sup> ~~25 and 27~~ Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

*(Take 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 the following meanings respectively:—

- (A) "The Colony" means Kenya Colony and Protectorate. "The Colony"
- (a) "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 or 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 or other salts of soda as obtained from raw soda as above mentioned.
  - (iii) "Soda Products" that is to say soda crystal caustic soda

*As (D) is not clear (some merely back to the Soda Deposit) (i) is a reply (ii) some things are not included in (iii)*

*The Magadi Soda Deposit is the lands included in the demise and also those presently*





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 wells shafts tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessee 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 Lessee.~~

Set

as in old lease

Set as drafted

as in old lease

(ii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.

(iii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring for sinking to or working the excepted minerals.

do

(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.

do

(v) So much of the Magadi Soda Deposit as the natives may remove for their own ~~purpose~~ <sup>use</sup> in the exercise of any native right ~~but not for sale or barter~~

(vi) 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 old lease



(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 ~~in any way~~ <sup>in any way</sup> 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.

*Subscribed in presence of*  
82  
Fixed rent

3 ~~7~~ 8. 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

4 ~~7~~ 9. (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 or as <sup>the Government</sup> 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.

5. 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:—

(i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. Lessees' Covenants  
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 skillful 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  
see also Memorandum

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~~ <sup>no reasonable defence</sup> 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 lease of the Railway to Lake Magadi of even date with these presents and made between the same parties.~~ <sup>the Railway lease</sup>
- (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 pay for soda  
just or wasted

To leave soda  
unworked for  
support

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 ~~the Railway Rules~~ <sup>the Railway Rules</sup> in a lease of the 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

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

- (vi) ~~(viii)~~ The Lessees will not cause or permit any unnecessary or reasonably avoidable obstruction or interruption to the development by the Crown Agents or the Government or their Lessees or any person authorised by them of the excepted minerals or to the transport conveyance or conversion of the produce thereof or to the exercise or enjoyment of any right or liberty excepted out of the demise hereby made or hereby reserved.
- (vii) ~~(ix)~~ The Lessees will keep all roads tunnels watercourses tramways railways engines fixed machinery and other works and conveniences belonging to or used in connection with the Magadi Soda Deposit in good and substantial repair and condition and working order so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit.
- (viii) ~~(x)~~ The Lessees will permit the Crown Agents and the Government and any person or persons authorised by them or either of them in this behalf at all reasonable times to enter upon inspect and examine the demised lands and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and manner of working and managing the same or for any other reasonable purpose. And will cause all such persons to have all such assistance as they may reasonably request from the employees of the Lessees.
- (ix) ~~(xi)~~ The Lessees shall comply with all obligations which may be imposed on them by any general Ordinance for the time being in force in the Colony except only in so far as any such Ordinance shall impose or purport to impose upon the Lessees an export duty on Raw Soda Soda Soda Products or Manufactured Soda.
- (x) ~~(xii)~~ In the construction of any works which may interfere with the traffic in any road street path or footway or with any rights of water or other rights or properties the Lessees shall not interfere with public and private conveniences and rights more than may be reasonably necessary and shall take all such precautions and 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 obstruct working of excepted minerals

Not to obstruct working of excepted minerals

To keep works in repair

To permit entry and view

To comply with Ordinances

Not to interfere with public or private rights

To pay for soda just extracted

To leave soda unworked for support

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

To indemnify  
Government  
against claims

(X)

(~~XII~~) 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

(~~XIII~~) 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

(~~XIV~~) 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

(~~XV~~) 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 use but not for sale or barter

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

XV

(~~XVI~~) 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.

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.

to be in old lease

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 Kaw Soda from the demised premises for their own purposes use but not for sale or barter

No spirituous liquor to be sold or imported except by 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)

(xviii) If the Government shall incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees' works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor

As to liability for special sanitary measures

(XVII)

(xix) 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 medicines for use of natives to be provided

(XVIII)

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

Native labour

(XIX)

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

As to user of roads and facilities for travellers

- (A) They will allow all roads made by the Lessees upon the demised premises to be used for the public service except roads inside or around their works.
- (B) They will permit travellers to encamp with their servants animals waggons and baggage for a period not exceeding 48 hours on any part of the demised premises which is uncultivated and which is not within one mile of any works or dwelling house and allow travellers and their servants and animals access to any river stream or lake upon the demised premises outside of the Lessees' works.

(XX)

(xxii) The Lessees will at the expiration or sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except so far as the Magadi Soda Deposit shall have been worked out under these presents and except also such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Magadi Soda Deposit.

To deliver up

(XXI)

Not to assign without licence

(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 and this restriction shall not apply to underletting for residential purposes.

(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.

(XXII)

The Governor may appoint one Director of the Lessees

(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.

x or becomes bankrupt or compounds with his creditors or takes the benefit of any act for that time being in force for the relief of insolvent debtors or be found bankrupt or because of insolvency.

See

The articles of association make this necessary

For the Lease term made

(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.

shall be in form the previous draft has been remodelled to agree with the present the only change will be as proposed and Gov

(B) The new Lease shall be for the residue then unexpired of the term hereby granted and shall contain <sup>such other matters as</sup> ~~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 Agent 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.

To supply

(A) To perform and observe the agreements on the part of The Nagadi Soda Company Limited contained in the two heretofore mentioned Agreements of the 18th day of March 1915 and the 2nd day of February 1916 which Agreements relate to a supply of water from the W'Gong Hills and the Sarel Falls and to the construction and maintenance of cattle troughs.

see in the report

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

Not to assign  
without licence

(XXI)

~~(XXI)~~

(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. *restriction shall not apply to underletting for residential purposes*

(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 hereinafore 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  
Lessees

(XXII)

~~(XXII)~~

(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.

\* or becomes bankrupt or compounds with his creditors or takes the benefit of any act for the time being in force for the relief of insolvent debtors or he is found bankrupt or becomes of unsound mind.

The Articles of Association  
make this necessary



Not to assign  
without licence

(XXI)

(amend)

- Use in other Lease  
3 Oct
- (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 Lessee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld. *no restriction shall not apply to underletting for residential purposes*
- (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.

(XXII)

(amend)

- The Governor may appoint one Director of the Lessees
- (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.

\* or becomes bankrupt or otherwise unable to discharge his liabilities or takes the benefit of any act for the time being in force for the relief of insolvent debtors or is found bankrupt or becomes of unsound mind.

- (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 <sup>in all respects</sup> ~~as nearly~~ 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 Lessee 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.
- (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 1915 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

Apply  
att.

Use in  
Co. p. 14.

The Governor  
may appoint one  
Director of the  
Lessees

The Articles of Association  
make this necessary

construct the cattle trough mentioned in the said Agreement of the 2nd day of February 1916 and the pipe line thereto from the Suroi Falls in such manner as to secure that the supply of water to the said cattle trough constitutes a first charge upon the water supplied through the said pipe line and thereafter during the term hereby granted to maintain the said cattle trough and pipe line in good repair and condition.

- (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.

Stat

(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.

Stat

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.

General

Stat  
working of the Magadi Soda Deposit.  
(How as drawn this was really too wide)

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*

*7*

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 <sup>or the Government</sup> or any persons rightfully claiming from or under them.

*Lessee to have first refusal of all land near railway*

(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

*see clause 10 of the lease*  
*see clause 11 of the lease*  
*see clause 12 of the lease*  
*see clause 13 of the lease*  
*see clause 14 of the lease*  
*see clause 15 of the lease*

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 consent  
For quiet enjoyment

77

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.

Lessees to have first refusal of all land near railway

(ii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Laide 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

see clause 10  
see clause 11  
see clause 12  
see clause 13  
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see clause 96  
see clause 97  
see clause 98  
see clause 99  
see clause 100

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

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 or 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-possesed and enjoy the same as in their former estate. And thereupon this Lease and the liberties hereinbefore granted shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein

Proviso for re-entry

re-entry  
Swing

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 of the  
Officers of the  
Government not  
to be personally  
liable

12 ~~11~~ ~~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

Certificate of  
the Governor

13 ~~12~~ ~~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

14 ~~13~~ ~~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 heretofore 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

15 ~~14~~ ~~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 of law

16 ~~15~~ ~~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

{any agreement that}

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 or rights in England

Members of the Government not to be personally liable

77 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

78 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 to be given to Lessees

79 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

80 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 of law

81 Except in cases of (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

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

Provision for Arbitration

82 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.

Arbitrators may make partial awards

(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.

May proceed ex parte

(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

<sup>(17)</sup> 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

<sup>(18)</sup> 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

<sup>(19)</sup> 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  
Magnoli Soda Company Limited  
was hereunto affixed in the  
presence of

Directors

Secretary



May inspect books  
and accounts and  
examine on oath.

<sup>(17)</sup>  
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.

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Marginal notes  
not to affect  
construction.

<sup>15</sup> ~~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.

27 71

**KENYA COLONY AND PROTECTORATE.**

**Lowe**

**RAILWAY TO LAKE MAGADI.**

\_\_\_\_\_  
DATED

1907  
\_\_\_\_\_

**BUTCHER, ORMANBY & COY.**

3 & 4 Great Winchester Street,

London, E.C.3.

21.11.24 54

**KENYA COLONY AND PROTECTORATE.**

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**Lease**

OF

**RAILWAY TO LAKE MAGADI.**

\_\_\_\_\_  
DATED

192  
\_\_\_\_\_

**SUTTON, OSMANNEY & OLIVER,**

3 & 4 Great Winchester Street,

London, E.C.2.

KENYA COLONY AND PROTECTORATE.

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Lease

OF

RAILWAY TO LAKE MAGADI.

DATED

192

SUTTON, OMMANNEY & OLIVER,

3 & 4 Great Winchester Street,

London, E.C.2.

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## KENYA COLONY AND PROTECTORATE.

This Indenture made the            day of            192

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of The Government of the Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at No. ~~19 Coleridge Street~~ <sup>19 Coleridge Street</sup> in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part.

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein.

Lease of Magadi Soda Deposits

And whereas for the purpose of working the said deposits the Lessees or their predecessors in title have at their own expense constructed the Railway hereby demised and the ~~works~~ <sup>Magadi Sea and Port</sup> hereinafter defined upon lands provided by the Government.

Construction of the Railway and the Sea Magadi Sea and Port

And whereas (hereinafter called "the Port Lease") an Indenture already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto and in the same order the Port hereinafter defined is intended to be demised to the Lessees from the said 1st day of November 1924 <sup>here</sup> during such term as the Magadi Lease shall be subsisting for a term of 99 years subject to payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained.

The Port Lease

Magadi Sea and Port

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 Soda Lease" means the second before recited Lease of even date herewith.
- (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.





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

Liberty to construct telegraph and telephone lines

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

In case of urgency to take possession

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

Carriage of military 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 <sup>the</sup> 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 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 Government

(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 :

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 in addition to the Railway

(D) The Uganda Railway Administration will allow the Lessees to run

(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

X a motor or push holly over the Railway for the use of their Managers Staff and workmen on occasions when there is no convenient haul available or on other occasions of emergency and provided such running does not interfere with the normal working of the Railway

Yearly minimum consignments 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.

(a) 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 arising from any of the causes mentioned in Clause 20 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 *Set*

(v) The Lessees will at the expiration ~~or termination~~ 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 herein contained and in proper order for the future working of the Railway.

*See Clause 11*

Not to assign without license

(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) ~~or suffer any cooperation (other than the Lessees or any person to occupy the demised premises or any part thereof) to be effected~~ without the previous consent in

*Not in old Lease Set as drafted*

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 hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

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

To give notice of finding any excepted minerals

*Not in old Lease 147*

(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

*Not in old Lease*

~~provided always that the Lessees do not agree with the opinion of the General Manager~~

(B) ~~If any difference shall arise~~ <sup>as to whether any land is or is not unnecessary for the purposes of the Railway such difference</sup> 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 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

*of the old lease  
of the old lease  
of prospective are agreed*

To comply with Ordinances

Not to interfere with public or private rights

To indemnify Government against claims

Obligation to provide office

No arms or ammunition to be sold to natives

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

1916 which Agreements relate to a supply of water from the N'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 construct the cattle trough mentioned in the said Agreement of the 2nd day of February 1916 and the pipe line thereto from the Surei Falls in such manner as to secure that the supply of water to the said cattle trough constitutes a first charge upon the water supplied through the said pipe line and thereafter during the term hereby granted to maintain the said cattle trough and pipe line in good repair and condition.

(xvii) (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 except in exchange therefor a new Lease containing a proper description of the property as ascertained by such survey.

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 stipulations in all respects as this Lease and <sup>mutako mutandi</sup> the difference between the parties as to the form of the new Lease shall be settled by the Government 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 of the 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.

To surrender  
in exchange  
for new  
Lease when  
Government  
survey made.

*There need be no difference in form when this present diff has been remodelled to comply with the Ordinance, the only difference will be as to description and term*

Water...  
Affect etc.

*See Note on Rider to page 3*

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

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 to carry 160,000 tons per annum*

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

*Is this necessary? Has not the railway been entirely completed? We are now instructed that the railway has been 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.

(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.

The Lessees shall at their own cost do all and any extraordinary repairs to the Railway (properly attributable to capital expenditure) and any difference as to whether any repairs or renewals are or may be necessary for the accommodation of their traffic

*Extraordinary repairs*

*make all such repairs to*

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

Rolling-stock

7. (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~~ <sup>Lessee</sup> shall from time to time deem necessary or proper for the carriage of the Lessees' liquid fuel. <sup>special</sup> Provided nevertheless that the Lessees shall not be entitled to any reduction of freight on liquid fuel by reason of the provision of any cars provided by the Lessees <sup>see also above para 11</sup>

Protection of Soda Goods in transit.

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

Loading and unloading.

9. The service of loading and unloading the Lessees 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 East, Uganda, Lake over the Uganda

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 East 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	18s. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 6d.

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

Rolling-stock

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

Loading and unloading

9 The service of loading and unloading the Lessees' 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 by the Uganda Railway to Magadi Junction

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 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	18s. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 6d.

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 of 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. 12.* 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. 16.* (i) All freight charges shall be payable to the Uganda Railway Administration in advance *or if the Lessees desire it the same shall be carried on a Ledger Account of which the same shall be secured by guarantees to the satisfaction of the Crown Agents.* (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 *(see below)* after the day on which the same should have been so paid *and thereafter* at the rate of £4 per cent. per annum and thereafter at the rate of £6 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. 14.* 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. 15.* 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

*x or on the part of the Lessees having desired the freight charges to be carried to a Ledger Account and having secured the same as aforesaid from and after the customary date for payment of Ledger Accounts*



To opposite margin

15 (iii)  
16 (iii)  
(11)

Lessees to have  
first refusal  
of all land  
near Railway.

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 persons or corporation other than the Lessees without first giving to the Lessees the opportunity 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 opportunity shall be exercisable by the Lessees within two months from and after service upon the Lessees of notice in that behalf.

13

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 <sup>but</sup> 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.

16. 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

16 M. Rider  
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 <sup>in this or other clause or in respect of the Lessees that this clause</sup> ~~premises or any part thereof in the event of the whole or any part thereof~~ <sup>shall be subject to the provisions of clause 17 of these conditions</sup> ~~named to have again possession thereof in the event of their becoming bankrupt~~ 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.

see Clause 17  
Not as drafted

At end 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 assets 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

NOTE

19. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway <sup>Unless our present modification of clause 14 (1) 14 (b) and 16 are accepted the provision of clause 18 is entirely contradictory if left as printed. If our modifications to the three earlier clauses are accepted we agree to clause 18 as printed.</sup>

do not do  
notified  
Not 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 enter upon the demised premises for any part thereof and to sell or otherwise dispose of the same and to have again possession and to occupy the same as before. 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.

See Clause 14  
Act as drafted

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

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 assets 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.

1874. 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.

1920. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

*Unless our present modifications of clause 18 (1) 14(a) and 16 are accepted the provision of clause 18 is entirely contradictory if left as printed. If our modifications to the three earlier clauses are accepted we agree to clause 18 as printed.*

NOTE

Option to the Government to purchase at any time

Option to the Government to purchase on other determination  
Act as drafted

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.

(ii) 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

old Lease

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

Carriage of goods

(C) The right to have the Railway with all necessary rolling stock and other equipment and the rights therein reserved worked and maintained in accordance with the provisions of clause 14 of these presents. 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 £5695 8/2 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 eight pence and two 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.

Can this sum be greater than the Company's share of the cost of the Railway? We must face this position by our present lease which is a memorandum of modification and it is not clearly modified.

Memorandum

Not agreed 7 1/2 shillings if the distance to the mine is 38 1/2 miles but we were under the impression the distance is about the same as that to Kileleshini viz 37 1/2 miles

21. The options of purchase conferred by clause 14 and 18 (i) of these presents shall not extend to any land which may have been acquired by the Lessees under clause 16 of these presents.

Continuation of content of option

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.

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.

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.

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.

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.

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.

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.

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.

Buty of the modifications  
in purple in clauses 17/18/  
14/14/16 are  
accepted

Property to be  
conveyed free from  
incumbrances

General Manager  
may delegate

Members or officers  
of Government not  
to be personally  
liable

Certificate of the  
Governor

Notice how to be  
given to Lessees

Expte matters

St. +  
Notice of these provisions to be endorsed on debentures  
14/11/16 accepted

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

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.

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.

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.

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.

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.

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.

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

Property to be conveyed free from incumbrances

General Manager may delegate

Members or officers of Government not to be personally liable

Certificate of the Governor

Notice how to be given to Lessees

Force majeure

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 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 the same

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.

Costs provided 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. 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.

May proceed  
ex parte

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

May inspect books  
and accounts and  
examine same

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

And provide for  
costs

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

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.

Order on Pasquet Soda Coy's Amendment

Amendment	Reference	Remarks
<u>Lake Lease</u>		
Amble.	Lake	Omission of reference to the Port Lease. A matter of drafting, which can be left to the Solicitor.
D.	Agree <del>not</del> amendment	Definition of the Pasquet Soda Deposit  "Any other salt" are already mentioned in (1) E.O. ? No objection to the amendment.
1. (P) (G).	Port. Lake	Omission of definition of Port Leases. A question of drafting.
2. (Para. 1.) Agree	Enclor. 73 to ORC's rep. 410. (20686/25)	In order. The words "together with the Pasquet Soda Deposit" are cordially added to replace words deleted earlier.
2. (Order) <del>not</del> to	Para 4. of Coy's letter 23.7.25 (10724/25)	Omission of order in order.



Railway lease

2. (ii)	Coy's letter 23.7.25. para 27. C.O. letter 19.8.25. para 2.(f).	Wait for Governor
3. (870 numbering)	Coy's letter 23.7.25 & 3. C.O. reply p 2.(b)	Wait for Governor
5. (xiv) (max 8)	cf under 2.(i) above.	wait for Gov
5. (xxi)(A)	Coy. letter 23.7.25 Para 28. Consider 2.(b)	Suggest \$ 1000
5. (xxiv)(B)	agree	Question of drafting.
5. (xxv)	Wait for Gov.	No Strms.
5. (xxiii)	Wait for Gov other "working"	2 agree to this amendment.
Old clause 8.	? Governor	See note as to this clause on 11/05/25. ? discussion with the British this clause is desirable

Clause amended.	Ref <sup>n</sup>	Remarks.
1. (5).	agree	cf. Lake lease 1. (D).
2. (para 1)	Par. 410. (20686/29) Right App. 'A'	
2. (Piden. omitted)	Wait for Coy's letter 23.7.25 para 4.	cf Lake lease
3.	agree	(for legal Strms)
4. (ii) D.	Coy's letter 23.7.25 para 24 Wait for Gov	No Strms. if the G. N. does not object.
4. (v).	agree	(Legal Strms)
4. (xvii) B.	cf Lake lease 5. (xxiv) B. agree	No Strms. A drafting question - at present time.
4. (xviii).	cf Lake lease 5. (xxi) Wait for Gov.	No Strms.
6.	Coy. letter 23.7.25. Para 18. C.O. reply, para. 2.(k) Wait for Gov	

Clause 7 (iii) *agreed*

Clause 10. Coy letter 23.7.25 para. 2.  
C.O. reply para 2(b)  
last para

Clause 12. C.O. letter 21 July (1937/25)

Clause 14 (iii) } *agreed*  
Clause 16 }

Clause 19 c Sgs let 24 March (11105/25)  
Gw's let 19 April (E) (17785/25)  
para 2(b) of C.O. letter of 19.8.25.

*last para*  
*of*  
*the*  
*letter*  
*of*  
*19.8.25*

For legal clause. See Coy's note to Cl. 18.

See minutes on 17785/25 (b) The General manager's suggestion in para 7 of Gw's let on 14/4/25 (i.e. in last sentence) is not being adopted - at any rate in the industry. See § 3 of Coy's letter of 23.7.25. • 2(b) fresh I think the Coy. can now be told that this clause may stand.

Clause 20 (A) Coy letter 23.7.25 para 6.

Await Gw's views on the figure.

Clause 20 (B) *agreed* on Clause 6 above.

Clause 20 (Note on last para) Coy letter 23.7.25 para 19.

last para C.O. reply para 2(b)

Clause 22 *agreed*

# Le Port Lease

Clause 2. Coy letter 23.7.25. last para para 20.21.

Clause 2 (i) *agreed*

? No objection v. art. 95 of old Rly. Act & c. 8 Memorandum.

Clause 2 (ii) Coy letter 23.7.25 para 26. C.O. reply para 2(b)

May await Gw's reply.

Clause 2 (revised) Coy letter 23.7.25 para 21. C.O. reply para 2(b)

cf. on Rly. lease for legal clause. do.

Clause 3. *agreed*

Clause 4. *agreed*

Clause 5 (i) *See minutes*

(a) *Refer to Gw's*  
(b) *Refer to Gw's*  
*Recommendation*

Clause 5 (ii) *Agreed* For legal clause - see para 3 of above

Mr Bush  
Mr Botherley

Dr. Carter

Clause 5. N(A) C.O letter 19.8.25  
(33724/25)  
para 2 (c)

Agreed.

Clause 8 (iii)

See legal opinion  
of 5/4 above.

Clause 12 (A) Coy. letter 23.7.25  
para 6.  
G.O. Govt

? await Gov's views on  
this figure.

Clause 12 (B)

Cf. Clauses 6 & 20 (B)  
Rly lease. ~~It~~

Please my notes as to the decision taken at  
Friday's meeting, & about the to Kenya (lat<sup>n</sup>)  
& to the Subcom

It is now hoped that, when the Gov's  
reply to 33724/25 is received, we shall be  
able to settle all the points on the lake  
& Railway leases, & send out finally  
agreed drafts of these documents to be  
recast in <sup>the</sup> local form ~~for~~  
before execution

As to the Port lease, the local  
Govt have not had the same opportunities  
of considering this & it was thought that  
it might be desirable, in sending out this,  
to invite the Gov's further views before  
requesting her to have it recast

J Steel  
3.11.25

JH Miller  
27/11/25

Send off the 2 drafts. I should like to  
have under look at the Subcom  
Wed. 6.11.25

action intended  
to take Gov's views into  
consideration

At a Meeting in Mr. Bottomley's room on October 30th, (Mr. Bushe, Mr. Allen, Mr. Seel also being present), it was decided to recommend the following action with regard to the further amendments suggested by the Magdi Seda Company to the draft leases.

*Lake Lease*

Remarks.

1. Preamble. Omission of the recital as to the Part Lease. See note below as to rider to Clause 2.
2. Clause 1(D). Amendment of definition. Agreed to Company's amendment, but the words "included in the demise hereby made" should be deleted.  
*(See now Pt. to the Sol<sup>o</sup>)*
3. Clauses I (B) and I (H) See note below as to rider to <sup>Clause</sup> page 2.
4. Clause 2. The first amendment is copied from enclosure (B) to O.A.G.'s despatch on 20686/25. *Agree*
5. Clause 2. Omission of rider. This depends on whether the proposal of the Company (see para. 13 of their letter on 33724/25) that separate grants should be made in respect of the water rights, is agreed to by the local government, and on this point the observations of the Governor must be awaited.
6. Clause 2 (ii). Await Governor's observations. (See para. 2 (ii) of C.O. letter on 33724/25.)



At a Meeting in Mr. Bettenley's room on October 30th, (Mr. Buash, Mr. Allen, Mr. Seal also being present), it was decided to recommend the following action with regard to the further amendments suggested by the Magdi Sada Company to the draft leases.

Lake Lease

Remarks.

- 1. Preamble. Omission of the recital as to the Port Lease. See note below as to rider to Clause 2.
- 2. Clause 1 (D). Amendment of definition. Agreed to Company's amendment, but the words "included in the demise hereby made" should be deleted.  
*(See now Pt. to the Sol<sup>ns</sup>)*
- 3. Clauses I (B) and I (E). See note below as to rider to <sup>Clause</sup> 2.
- 4. Clause 2. The first amendment is copied from enclosure (B) to O.A.G.'s despatch on 20625/25. *Agree.*
- 5. Clause 3. Omission of rider. This depends on whether the proposal of the Company (see para. 13 of their letter on 33724/25) that separate grants should be made in respect of the water rights, is agreed to by the local government, and on this point the observations of the Governor must be awaited.
- 6. Clause 3 (ii). Await Governor's observations. (See para. 2 (ii) of C.O. letter on 33824/25.)

7. Clause 3. (Omission of)

Await Governor's reply, (See para. 2 (B) of C.O. letter on 33724/25).

8. Clause 5. (XIV).

Compare note on 2 (A) & (B).

9. Clause 5 (XX) (A).

This amendment (agreed to in C.O. letter of the 23rd July on 33724/25 (para. 2 (f))) to be accepted on condition that sub-leases granted under the amendment shall be for a term of not more than one year.

10. Clause 5 (XXIII)

Agree to Company's amendments subject to the insertion of the word "general" before "working".

11. Clause 5 XXIV(B).

Agreed.

12. Clause XXV.

See note above as to omission of rider to Clause 2.

13. Original Clause 8.

It is thought that the omission of this clause should be agreed to, in view of the reasons marginally noted by the Company and also of the fact that Clause 8 (original Clause 9) provides for re-entry in the case of breach of covenant, apart from the right of the Government to sue the Company if necessary.

RAILWAY LEASE.1. Clause 1 (J)

Compare note on Clause 1(D) of Lake Lease. *Agree.*

2. Clause 2.

The first amendment follows Appendix 'A' to the Governor's



despatch on 20686/25.

3. Clause 2, Rider -  
(omission of).

See similar note on Clause 2  
of Lake Lease. *Await Gov's order.*

4. Clause 3 (B)  
Clause 4 (D)  
Clause 14 (II)  
Clause 16.

The scheme of the lease, as originally drafted, appears to be that on termination at the end of the term, all the assets of the lessees, whether strictly landlords' or tenants' <sup>fixtures</sup> should become the property of the lessors, but that on termination for any cause other than the expiration of the term granted, the assets of the lessees should fall to the lessors; but the lessors are given power to purchase the assets if they so desire.

(Note drafted  
by Mr. Buxton, who  
thinks that the  
words he expresses here  
shd. be put to the  
Sot<sup>ys</sup>, to give them  
an opportunity of  
commenting before  
any decision is taken)

In coming to this conclusion weight has been given to the express provision contained <sup>in the</sup> under parenthesis in the old Clause 15, and the consequential power in old Clause 16 to purchase the ~~whole~~ of the assets without distinction as to whether they are landlords' or tenants' fixtures. The inference to be drawn from these two provisions seems to be clearly as above. The various amendments proposed under this head are only designed to bring the respective clauses into harmony with this general scheme.

5. Clause 4 IV (D).

Await Governor's despatch in reply to 35724/25. (See para 24 of the Gov's letter for what this is about.)

6. Clause 4 (XVII B.)  
(See now Pt. 16 the  
S.O.M.)  
Agreed; <sup>but</sup> that the last words  
"this decision shall be final"  
should be deleted.
7. Clause 4. (XVIII.)  
Compare note on Lake Lease  
Clause 5 (XIV). Await Gov's Order  
Follows Para. 2 (K) of C.O.  
letter on 22724/25. The Governor's  
observations should be obtained.
8. Clause 6.  
Agreed.  
Await Governor's reply <sup>or</sup> to para.  
2 (A) of letter <sup>to the Gov</sup> on 33724/25.
9. Clause 7 (ii)  
(See Pt. 16)
10. Clause 10.  
Follows C.O. letter of 21st July  
on 31937/25. Agreed.
11. Clause 12.  
This depends on Governor's reply  
to the point dealt with in para. 3 <sup>216</sup> of  
a letter of 19th August on 33724/25  
and must await the reply.
12. Clause 19. (C.)  
The Company should be asked to  
allow the Solicitors to the Crown  
Agents for the Colonies access to  
their books for the purpose of check-  
ing the figure now mentioned, and  
at the same time the Governor should  
be informed of the figure by telegram  
and asked for any observations.
13. Clause 20 (B.)  
Agreed.
14. Clause 20.  
See paragraph 3 (L) of C.O.  
(Note on last para.) letter on 33724/25. Await Governor's  
reply.
15. Clause 23.  
Agreed.

**PORT LEASE.**

1. Clause 3.  
Await Governor's reply <sup>to the letter to the Gov</sup> on  
33724/1925.



(NB. It will be as well, in sending out this Pt. of the Lease, to ask that the first part of Clause 2 shall be completed) ~~therein~~

2. Clause 2 (I).

Agreed. ↓

3. Clause 2 (III).

(a) Wait for Governor's reply as to 2 (R) of C.O. letter on 33724/25 as to the proposal to sell the branch railway to the Government.

(b) Agreed as to proposed addition of words regarding the road.

4. Clause 2 (Rent).

Wait for Governor's reply to 33724/25. (2a) of letter to the Gov.

5. Clause 3.

Clause 4.

Clause 5 (III).

Clause 6 (III).

Compare similar note on Clause 3 FRI &c., of Railway Lease. *Agreed*

6. Clause 5 (II).

Propose new rider. It was considered that both parts of this rider should be referred to the Governor with a recommendation in both cases that they should be adopted as the most satisfactory solution of the present position. (On line 9 of the first proviso "dues" are substituted perhaps "dues, duties or taxes").

7. Clause 5 (A).

Compare note on Clause 5 (XXI)(A) of Lake Lease. *Agreed on the same conditions as in that case.*

8. Clause 12.

Compare note on Railway Lease, Clause 20 (A). *Action as there suggested.*

9. Clause 12 (B).

Agreed. (This was marked by the Secretary to the Govt. - but I agree it is all right - see Cl 20 B of Railway Lease)

Very well  
C.S.  
11"

SUTTON, OSMANNEY & OLIVER.

S. G. OLIVER.

H. M. OSMANNEY.

TELEGRAPHIC ADDRESS—OSMANNEY, LONDON.

NO 1288 } LONDON WALL.  
TELEPHONE—NO 9216 }

31937/25.

3 & 4, GREAT WINCHESTER STREET,

LONDON, E.C.2.

45746

PH

10 OCT 25

9th October, 1925.

Sir,

Kenya Colony  
Nagadi Soda Company Ltd.

We beg to hand you herewith for your further information facsimile prints of the three Leases showing the latest amendments made by the Company in violet ink. The previous amendments are shown in red and green ink.

The Company, in their covering letter to us, have not suggested any explanation or argument in support of their amendments beyond those contained in their letter to you of 23rd July last.

We shall, of course, be ready to discuss the amendments at any time convenient to you; but, as we observe that many of the most important amendments have been referred to the Governor of the Colony, it may be that you will prefer to defer further discussion of the drafts until the views of the Governor have been ascertained.

111  
33724  
25

-2-

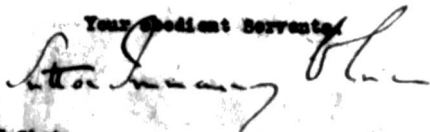
With regard to the Port Lease - in the preamble at the top of page 2, it appears to be that there is no occasion to recite or refer to the 1919 Lease which had better be dealt with in the same way as the old Lease of Lake Ngadi and the Railway. We suggest that the following recital should be inserted:-

"And whereas for the purpose of working the said deposits of carbonate of Soda at Lake Ngadi the Lessees of the Company whose assets they have acquired have at their own expense constructed a pier branch railway depot, works sidings and other works at or near Kilindini upon lands provided by the Government and have agreed to take and the Government have agreed to grant a lease of the said premises."

We have the honour to be,

SIR,

Your obedient Servant,



The Under Secretary of State,  
Colonial Office, S.W.1.

558

Seel 3. 21. 25

*Alley*  
*Stucke*  
*Bohannan* 6. 11. 11  
*for name*

*Good*  
*could meet*  
*3.5 pm 6. 11. 11*

Dowling Street,

November, 1935

Shuckburgh.

Davis.

*6 hrs.*

Grindle.

*Milner*  
*Washington Smith*

My despatch 19th August

Ormsby-Gore.

*33724/25*

792 Magill Company have submitted

Amery.

DRAFT. Code Telegram

GVERNOR,

NAIROBI,

provisionally amended leases but I shall

await reply to my despatch before taking

further action. *Please include* The following new

*in your despatch* provisions on *points arise, however, on which I shall* following additional points. *be glad to receive observations.*

Lake Lease. Company insist

on deletion of Clause 9 power of

distress on ground that <sup>*it is*</sup> not in old

lease. Consider this may be accepted

especially in view of provision for

re-entry in Clause 10.

Railway Lease, Clause 6. See *General Manager's* provisions on

2(K) of enclosure to my despatch. ~~Should~~ *should be included in your despatch* be glad if these proposals can be dealt

~~with in your despatch.~~

*29th*

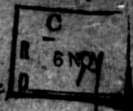
*X*  
*See all notes*  
*Good*

Railway Lease Clause 20 (A).

Company

Recd 3 21.25

*Allen 5  
B. 6  
6*



569  
9 November, 1935.

*Handwritten signature/initials*

- Mr. J. Shackburgh
- Mr. Denis
- Mr. G. Christie
- Mr. Ormsby-Gore
- Mr. Amery

Gentlemen,

I am, etc., to ask the receipt of your letter of the 9th of October, transmitting fac-simile prints of the draft leases to be entered into with the Masai Soda Company Limited, showing the amendments provisionally made by the Company in pursuance of the letter from this Department of the 19th August.

2. Mr. Amery proposes to defer making any comment on these amendments until he has received the observations of the Governor of Kenya on the questions raised by the Company in their letter of the 23rd of July; but in order that he may be in a position to furnish the Governor in due course with copies of this correspondence, I am to request that in the meantime you will furnish two additional fac-simile prints of

DRAFT

Mr. Sutton, O'Mahony & Oliver.

*1/14/35*

*27/10/35*

*copy to Mr. 09*

*27/11*

each of the leases, as now amended.

3. At the same time I am to invite attention to <sup>two</sup> certain minor points in connection with the prints enclosed with your letter:-

(a) Lake Lease. Clause 1 (D). In view of the amendment now proposed, it would appear that the printed words "included in the demise hereby made" should be deleted.

b) Railway Lease. Clause <sup>4</sup> (XVII D) Similarly, ~~that~~ the words "whose decision shall be final" at the end of this sub-clause, should be deleted.

Mr. Amery concurs with the suggestion in the last paragraph of your letter as to the form of the recital to be inserted in the preamble to the <sup>Act</sup> Lease.

I am, etc.

(Signed) W. O. BOTTOMLEY.